

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 308 HON. CHARLES W. MC COY, JUDGE
RICHARD BOEKEN,)

)
PLAINTIFF,)

)
VS.) SUPERIOR COURT
) CASE NO. BC 226593
PHILIP MORRIS, INCORPORATED,)
A CORPORATION; INTERNATIONAL HOUSE)
OF PANCAKES, INCORPORATED, A)
CORPORATION,)

)
DEFENDANTS.)

)
REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
THURSDAY, MAY 3, 2001
P.M. SESSION
VOLUME 27B

PAGES 4377 THROUGH 4443, INCLUSIVE
APPEARANCES:

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I N D E X

THURSDAY, MAY 3, 2001..... 2:4377:3
1:38 P.M..... 2:4377:7

WITNESS

ELLEN MERLO

CROSS-EXAMINATION (RESUMED) BY MR. PIUZE..... 2:4377:25
4377

1 CASE NUMBER: BC 226593
2 CASE NAME: BOEKEN V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA THURSDAY, MAY 3, 2001
4 DEPARTMENT 308 HON. CHARLES W. MC COY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA STALEY, CSR NO. 3359, RMR, CRR
7 TIME: 1:38 P.M.

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11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT IN THE PRESENCE
13 OF THE JURY:)

14
15 ELLEN MERLO,
16 WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:
17
18 THE COURT: THE JURY PANEL IS WITH US; COUNSEL ARE
19 PRESENT.

20 MA'AM, YOU UNDERSTAND YOU ARE STILL UNDER OATH?
21 THE WITNESS: YES, I DO.
22 THE COURT: MR. PIUZE.
23 MR. PIUZE: THANK YOU.
24
25 CROSS-EXAMINATION (RESUMED)
26 BY MR. PIUZE:
27 Q. HERE'S EXHIBIT 456. I CAN BRING THIS UP AND
28 SHOW THIS TO YOU, IF YOU'D LIKE.
4378
1 WOULD YOU LIKE ME TO DO THAT?
2 A. YES.
3 Q. THERE'S TWO PLACES IN THAT DOCUMENT THAT HAVE A
4 YELLOW HIGHLIGHTER ON IT. THOSE ARE THE AREAS I'M GOING TO
5 ASK YOU ABOUT. OKAY?
6 A. YES.
7 Q. THANKS.
8 ANYWAY, THIS IS EXHIBIT 456, WHICH HAS
9 PREVIOUSLY BEEN DISPLAYED. AND THIS IS FROM THE TOBACCO
10 INSTITUTE.
11 ARE YOU FAMILIAR WITH THIS DOCUMENT?
12 A. JUST NOW THAT YOU'VE SHOWN IT TO ME.
13 Q. YOU HAVEN'T SEEN IT BEFORE?
14 A. I DON'T BELIEVE I HAVE. BUT I DIDN'T READ THE
15 ENTIRE DOCUMENT.
16 Q. I'M JUST GOING TO ASK YOU ABOUT JUST A COUPLE
17 OF THINGS HERE.
18 MR. LEITER: YOUR HONOR, OBJECTION. FOUNDATION.
19 SHE'S NOT FAMILIAR WITH THE DOCUMENT.
20 THE COURT: FOUNDATION.
21 Q. BY MR. PIUZE: DO YOU KNOW WHAT THE CIGARETTE
22 CONTROVERSY WAS?
23 A. I REALLY HAVE NOT SEEN THIS DOCUMENT BEFORE,
24 AND SO I COULD ONLY CONJECTURE. I MEAN, I DON'T KNOW LOOKING
25 WHAT YOU'VE PUT UP THERE, BUT I DON'T KNOW THE OVERALL
26 CONTENT OF THIS DOCUMENT.
27 Q. FORGET THE CONTENT OF THE DOCUMENT. I TURNED
28 IT UPSIDE DOWN.
4379
1 DO YOU KNOW WHAT THE CIGARETTE CONTROVERSY IS?
2 A. I DON'T KNOW WHAT SPECIFICALLY YOU'RE REFERRING
3 TO AS -- NO. I MEAN, YOU'D HAVE TO BE MORE SPECIFIC.
4 Q. OKAY. (READING:)
5
6 "THERE IS A CIGARETTE
7 CONTROVERSY: THE CAUSAL THEORY" --
8
9 MR. LEITER: YOUR HONOR, I'M GOING TO OBJECT TO THE
10 READING FROM THE DOCUMENT BEFORE THE FOUNDATION'S
11 ESTABLISHED.
12 THE COURT: WELL, I'LL ALLOW IT.
13 MR. PIUZE: (READING:)
14
15 -- "THAT CIGARETTE SMOKING
16 CAUSES OR IS THE CAUSE OF VARIOUS DISEASES
17 WITH WHICH IT IS REPORTED TO BE RELATED
18 STATISTICALLY IS JUST THAT, A THEORY."
19
20 Q. SO THAT'S -- AT LEAST, THIS IS KORNEGAY -- THIS
21 IS THIS PERSON'S DEFINITION OF THE CIGARETTE CONTROVERSY.
22 HAVE YOU HEARD OF THE CIGARETTE CONTROVERSY?
23 A. IN THAT CONTEXT, I DID NOT, BECAUSE I HAVE NOT
24 SEEN THAT DOCUMENT, BUT THAT WAS OBVIOUSLY KORNEGAY'S POINT

25 OF VIEW.

26 Q. WELL, LET'S FORGET KORNEGAY.

27 YOU'VE, OBVIOUSLY, ACKNOWLEDGED WHAT IS TRUE;

28 THAT PHILIP MORRIS WAS A MEMBER OF THE TOBACCO INSTITUTE
4380

1 EVERY MINUTE THAT THE TOBACCO INSTITUTE EXISTED, RIGHT?

2 A. WE WERE A MEMBER FOR A VERY LONG TIME. I

3 ASSUME WE WERE A MEMBER AT THE BEGINNING, BUT I DON'T KNOW
4 THAT FOR ABSOLUTELY SURE. BUT WE WERE A MEMBER FOR A VERY
5 LONG TIME, YES.

6 Q. RIGHT. UNTIL THE LAST DATE THAT IT EXISTED?

7 A. THAT'S CORRECT.

8 Q. SO ANYWAY, FORGET KORNEGAY AND FORGET THE

9 TOBACCO INSTITUTE. LET'S JUST TALK ABOUT YOU OVER AT
10 PHILIP MORRIS.

11 DID YOU KNOW THAT THERE WAS A CIGARETTE
12 CONTROVERSY?

13 A. IN THOSE TERMS, I DID NOT KNOW THAT THERE WAS A
14 CIGARETTE CONTROVERSY. I CERTAINLY KNEW THERE WAS DISCUSSION
15 ABOUT CIGARETTES AND CAUSATION AND HEALTH AND ALL THOSE
16 THINGS. EVEN BEFORE I CAME TO PHILIP MORRIS, I KNEW THAT
17 THERE WAS DISCUSSION ABOUT CIGARETTES AND THE HARM THAT THEY
18 CAUSED, ET CETERA, AND THERE WAS A LOT OF PUBLIC INFORMATION
19 AVAILABLE, ABSOLUTELY.

20 Q. DO YOU WANT TO SAY MORE?

21 A. NO.

22 Q. WHILE YOU WERE AT PHILIP MORRIS, DID YOU, IN
23 THE BUILDING WITH OTHER PEOPLE, EVER DISCUSS THE FACT THAT
24 THE PRODUCTS THAT YOU WERE MAKING WERE KILLING LOTS OF
25 PEOPLE?

26 A. WE CERTAINLY DISCUSSED THE FACT THAT CIGARETTES
27 WERE A RISK FACTOR IN DISEASE. WE CERTAINLY DISCUSSED THE
28 FACT THAT WE WERE PUTTING WARNINGS ON OUR PACKS TO MAKE SURE
4381

1 THAT PEOPLE UNDERSTOOD THAT THERE WERE HEALTH CONCERNS
2 REGARDING OUR PRODUCT. AND THE WHOLE TIME I WAS AT
3 PHILIP MORRIS, WE WERE WARNING PEOPLE ABOUT THE HEALTH
4 EFFECTS OF OUR PRODUCT THROUGH WARNING LABELS, ET CETERA.

5 Q. YOU WERE FORCED TO PUT THOSE WARNING LABELS ON
6 THOSE PRODUCTS BY THE UNITED STATES CONGRESS, WEREN'T YOU?

7 A. I NEVER SAID THAT WE WEREN'T. THE UNITED
8 STATES CONGRESS AND THE PUBLIC HEALTH COMMUNITY DECIDED WHAT
9 SOCIETY SHOULD KNOW ABOUT THE HEALTH EFFECTS OF CIGARETTES
10 AND, YES, THEY ARE MANDATED WARNINGS THAT WE CARRIED ON OUR
11 PACKS TO COMMUNICATE THAT INFORMATION; AS WELL AS ALL THE
12 OTHER INFORMATION THAT WAS PUBLICLY AVAILABLE TO PEOPLE ABOUT
13 THE HARMFUL EFFECTS OF CIGARETTES FROM THE PUBLIC HEALTH
14 COMMUNITY THAT WAS OUT THERE AT THE SAME TIME.

15 Q. HERE'S THE QUESTION I ASKED: DURING THE YEARS
16 YOU WORKED FOR PHILIP MORRIS, DURING A LUNCH BREAK OR IN THE
17 ELEVATOR OR AT THE WATER COOLER IN THE PARKING LOT, ANYPLACE,
18 DID YOU AND SOME OF YOUR FELLOW WORKERS EVER SAY, YOU KNOW,
19 IS IT A GOOD IDEA WHAT WE'RE DOING BECAUSE SO MANY PEOPLE ARE
20 DYING FROM USING THIS?

21 A. WELL, I THINK WHAT WE DISCUSSED IS, OBVIOUSLY,
22 THAT OUR PRODUCT WAS HARMFUL AND THAT THERE WERE ISSUES
23 CONCERNING OUR PRODUCT AS FAR AS HEALTH WAS CONCERNED. OUR
24 FOCUS WAS, FOR YEARS, AS LONG AS I CAN REMEMBER, HOW DO WE
25 REMOVE SOME OF THAT HARM, HOW DO WE MAKE BETTER PRODUCTS.

26 I -- YOU KNOW, I -- WE DIDN'T DISCUSS NOT BEING IN THE
27 BUSINESS, IF THAT'S WHAT YOU'RE ASKING ME.

28 Q. NO. IT'S REALLY, TRULY NOT WHAT I'M ASKING
4382

1 YOU. I'M NOT ASKING YOU ABOUT GETTING OUT OF THE BUSINESS.
2 I'M JUST WONDERING IF ANY OF YOU DID ANY SOUL
3 SEARCHING SAYING, WHAT ARE WE REALLY DOING HERE?
4 A. I THINK WHEN YOU WORK FOR A TOBACCO COMPANY,
5 YOU THINK LONG AND HARD ABOUT WHAT YOU'RE DOING AND FOR THE
6 COMPANY THAT YOU'RE WORKING FOR. AND IN FACT, WHEN I
7 INTERVIEW NEW PEOPLE THAT MIGHT BE HIRED TO COME TO WORK FOR
8 PHILIP MORRIS, I ASK THEM TO THINK SPECIFICALLY THAT THEY'RE
9 COMING TO WORK FOR A TOBACCO COMPANY AND HOW DO THEY FEEL
10 ABOUT THAT.
11 I DON'T WANT PEOPLE THAT ARE THOUGHTLESS
12 WORKING FOR THE COMPANY. SO, OF COURSE, WE THINK ABOUT IT.
13 BUT THE ISSUE IS THAT SOCIETY HAS DEEMED THAT THIS IS A LEGAL
14 PRODUCT. THE GOVERNMENT HAS PROSCRIBED HOW PEOPLE SHOULD BE
15 INFORMED ABOUT THIS PRODUCT. AND BOTTOM LINE, I DO BELIEVE
16 IN ADULT CHOICE.
17 Q. SO IS THAT A YES OR A NO?
18 A. THAT WAS AS CLEAR AN ANSWER AS I COULD GIVE
19 YOU. DO I EVER THINK ABOUT IT?
20 YES, I THINK ABOUT IT OFTEN. SO I GUESS THAT'S
21 A YES. YES, I DO THINK ABOUT IT.
22 Q. OKAY. DO YOU KNOW DR. FARONE?
23 A. I DO NOT KNOW DR. -- NO, I DO NOT KNOW
24 DR. FARONE.
25 Q. DO YOU KNOW WHO HE IS?
26 A. I KNOW WHO HE IS, BUT I'VE NEVER MET
27 DR. FARONE.
28 Q. DIDN'T YOU USE TO GO DOWN TO THE MEETINGS AS
4383
1 PART OF THE EXECUTIVE TEAM -- NOT NECESSARILY THIS LAST
2 LAYER -- BUT LONG BEFORE THAT, DIDN'T YOU USED TO GO DOWN TO
3 RICHMOND TO MEETINGS?
4 A. NOT VERY MUCH, NO, I DIDN'T. WHEN I WAS IN THE
5 MARKETING DEPARTMENT AND BEFORE I WAS PART OF THE SENIOR
6 TEAM, I WOULD GO TO RICHMOND FOR ANNUAL MEETINGS AND
7 OCCASIONALLY GO, OTHERWISE, BUT, NO, I DID NOT SPEND A LOT OF
8 TIME AT RICHMOND.
9 Q. OKAY. I'M JUST GOING TO TELL YOU SOMETHING
10 THAT WAS STATED HERE SO I CAN SET UP A QUESTION TO YOU SO YOU
11 KNOW WHERE I'M GOING.
12 DR. FARONE TOLD THIS JURY THAT WHEN HE WALKED
13 INTO PHILIP MORRIS IN 1976 -- FOR YOUR INFORMATION HE WAS
14 THERE BETWEEN '76 AND '84.
15 A. RIGHT.
16 Q. WHEN HE WALKED IN IN '76, HE WAS TOLD BY A
17 SENIOR SCIENTIST THAT THE PRODUCT CAUSED CANCER, THE PRODUCT
18 WAS ADDICTIVE, THAT THE COMPANY WAS PROBABLY GOING TO BE
19 REGULATED OUT OF EXISTENCE IN, I THINK, HE SAID FIVE OR TEN
20 YEARS, SOMETHING LIKE THAT, AND MAYBE IT WAS HIS JOB TO, A,
21 GET PHILIP MORRIS INTO DIFFERENT BUSINESSES AND, B, TRY TO
22 MAKE A SAFER CIGARETTE.
23 SO PLEASE ACCEPT THAT, BECAUSE I THINK IF IT'S
24 NOT A QUOTE, IT'S CLOSE.
25 MR. LEITER: AND I'M GOING TO OBJECT TO THE
26 CHARACTERIZATION OF TESTIMONY.
27 THE COURT: SUSTAINED. COMPARATIVE CROSS. COUNSEL
28 WILL REMEMBER THAT TERM.
4384
1 MR. PIUZE: GONE.
2 THE COURT: GONE. OUT OF THE PARK.
3 MR. PIUZE: OUT OF THERE.
4 Q. DID YOU EVER HEAR ANYONE AT PHILIP MORRIS FROM
5 1969 ON DENY THE FACT THAT SMOKING CAUSED LUNG CANCER?

6 A. I NEVER HEARD ANYONE DENY IT. I CERTAINLY
7 HEARD PEOPLE SAY THAT WE DID NOT KNOW MECHANISM AND WE DID
8 NOT KNOW CONSTITUENTS; THAT THERE WAS EPIDEMIOLOGY THAT
9 CERTAINLY ESTABLISHED A CONNECTION, BUT THAT WE DID NOT KNOW
10 MECHANISM AND WE DIDN'T KNOW CONSTITUENTS.

11 Q. SO YOU NEVER HEARD ANYONE DENY THAT SMOKING
12 CAUSED LUNG CANCER AT PHILIP MORRIS WHILE YOU WERE THERE?

13 A. I -- I DON'T REMEMBER SOMEONE SPECIFICALLY
14 SAYING THAT. I DO REMEMBER US TAKING A POSITION ABOUT WHAT
15 WE DID NOT KNOW, WHICH WAS MECHANISM AND CONSTITUENTS.

16 Q. OKAY. SO LET'S GO TO THE SECOND PART.
17 DID YOU EVER HEAR ANYBODY AT PHILIP MORRIS FROM
18 1969 ON WHILE YOU WERE THERE DENYING THE FACT THAT TOBACCO
19 WAS ADDICTIVE?

20 A. AGAIN, I THINK I -- I STATED THE POSITION OF
21 THE COMPANY --

22 Q. LET ME INTERRUPT FOR ONE SECOND. I APOLOGIZE.

23 I'M NOT INTERESTED IN THE POSITION OF THE
24 COMPANY. THAT'S NOT WHAT I'M ASKING.

25 I'M ASKING: DID YOU HEAR -- NOT FOR PUBLIC
26 RELATIONS, NOT FOR GOVERNMENTAL, NOT FOR JURIES -- DID YOU
27 HEAR A PERSON IN THE HALLS, IN A MEETING, ANYPLACE, SAY,
28 TOBACCO IS NOT ADDICTIVE?

4385

1 A. I DID. AND WE DISCUSSED EARLIER THAT
2 EXECUTIVES OF OUR COMPANY MADE THAT PUBLIC POSITION BASED ON
3 OUR INTERPRETATION OF THE DEFINITION OF ADDICTION.

4 Q. OKAY. I APOLOGIZE FOR HAVING INTERRUPTED YOU
5 MAYBE A LITTLE TOO VIGOROUSLY. I'M SORRY.

6 A. NO. IT'S FINE.

7 Q. NO, IT ISN'T. I'M SORRY.

8 LET ME SHOW YOU EXHIBIT 3 HERE. THIS IS A
9 PHILIP MORRIS DOCUMENT. IT'S IN EVIDENCE HERE. THIS IS
10 MR. DUNN, DR. DUNN.

11 MR. LEITER: YOUR HONOR, SAME OBJECTION. BEFORE WE
12 SHOW THE DOCUMENT, CAN WE ESTABLISH FOUNDATION AS TO THIS
13 WITNESS?

14 THE COURT: ALL RIGHT.

15 MR. PIUZE: AND SHE HAS TO HAVE SEEN THIS FOR ME TO
16 QUESTION HER ABOUT IT?

17 THE COURT: NO. SHE JUST HAS TO HAVE SOME FAMILIARITY
18 WITH THE SUBJECT MATTER.

19 Q. BY MR. PIUZE: HAVE YOU EVER HEARD OF A
20 ST. MARTIN?

21 AN ISLAND IN THE CARIBBEAN?

22 A. ST. MARTIN ISLAND?

23 Q. YES.

24 A. I'VE HEARD OF IT, YES.

25 Q. DID YOU KNOW THAT THERE WERE A BUNCH OF
26 PHILIP MORRIS BRASS THAT WENT DOWN TO ST. MARTIN IN THE EARLY
27 '70'S TO DISCUSS ADDICTION?

28 A. NO, I DID NOT.

4386

1 Q. WHEN IS THE FIRST TIME THAT YOU EVER HAD
2 ANYTHING TO DO WITH ADDICTION BEING A PUBLIC SPOKESPERSON FOR
3 THE CORPORATION ABOUT ADDICTION, GOING TO THE GOVERNMENT
4 ABOUT ADDICTION, DOING ANYTHING AT ALL ABOUT ADDICTION?

5 A. IT WOULDN'T HAVE BEEN UNTIL I GOT INTO
6 CORPORATE AFFAIRS, WHICH WAS IN THE EARLY '90'S. '92 TO BE
7 EXACT. AND I DON'T KNOW HOW SOON THEREAFTER I STARTED TO
8 MAKE PUBLIC STATEMENTS. BUT SOMETIME IN THE EARLY '90'S.

9 Q. OKAY. IS IT YOUR TESTIMONY NOW, BASED ON WHAT
10 YOU KNOW, THAT AT ALL TIMES AFTER YOU WERE IN THE COMPANY

11 THAT NO ONE -- UNTIL THE WEBSITE, NOW, UNTIL THE RECENT
12 WEBSITE -- THAT NO ONE IN THE COMPANY SAID, OUR PRODUCT IS
13 ADDICTIVE?

14 A. IF YOU'RE ASKING ME OF FIRSTHAND KNOWLEDGE, I
15 DON'T HAVE IT. I DO NOT REMEMBER HAVING THOSE CONVERSATIONS.
16 AS I TOLD YOU, I DIDN'T GET INVOLVED IN TALKING ABOUT ISSUES
17 THAT RELATED TO OUR PRODUCT UNTIL THE EARLY 1990'S. SO I
18 DON'T KNOW WHAT MIGHT OR MIGHT NOT HAVE BEEN SAID IN THOSE
19 MEETINGS, BECAUSE I WASN'T A PARTICIPANT, AND I CERTAINLY
20 WASN'T PART OF SENIOR MANAGEMENT DURING THAT TIME.

21 Q. DID YOU EVER HEAR ANYONE AT PHILIP MORRIS SAY
22 THAT SMOKING IS JUST LIKE EATING AND COPULATING; THE
23 PHYSIOLOGICAL EFFECTS SERVE AS THE INCENTIVE?

24 A. I HAVE NEVER HEARD -- HEARD THAT PHRASE BEFORE
25 EVER.

26 Q. THAT THE CIGARETTES SHOULD BE CONCEIVED NOT AS
27 A PRODUCT BUT AS A PACKAGE, THE PRODUCT IS NICOTINE?

28 A. I DON'T REMEMBER THAT STATEMENT.

4387

1 Q. OKAY. WELL, LET'S FORGET THE EXACT QUOTE OF
2 THE STATEMENT.

3 DID YOU HEAR PEOPLE SAY, OUR PRODUCT IS
4 NICOTINE?

5 A. I HAVE HEARD THAT IN THE PAST SOMEONE MADE
6 REFERENCE TO NICOTINE DELIVERY, BUT I HAVE NOT EVER HEARD
7 THAT STATEMENT, NO. NEITHER OF THE STATEMENTS THAT YOU JUST
8 READ ME.

9 Q. THINK OF THE CIGARETTE AS A DISPENSE --
10 MR. LEITER: YOUR HONOR, I'M GOING TO OBJECT. WE'RE
11 NOT ESTABLISHING FOUNDATION, AND NOW, WE'RE JUST READING THE
12 DOCUMENT.

13 THE COURT: THE DOCUMENT HAS ALREADY BEEN PUT IN FRONT
14 OF THE JURY. THE QUESTION IS WHETHER OR NOT IT IS RELATED TO
15 THIS WITNESS, AND SO FAR, IT HAS NOT BEEN ESTABLISHED.
16 HOWEVER, COUNSEL MAY PROCEED. SEE IF SHE HAS
17 ANY KNOWLEDGE OF THESE KINDS OF STATEMENTS.

18 MR. PIUZE: THANK YOU, YOUR HONOR. I'M GOING TO DO
19 SOMETHING ELSE.

20 THE COURT: ALL RIGHT.

21 Q. BY MR. PIUZE: LET'S SEE. I'M READY TO SWITCH.
22 READY?

23 A. READY WHEN YOU ARE.

24 Q. BACK IN MARKETING, WASN'T THERE ONE OF THOSE
25 CIGARETTES, THEIR SLOGAN WAS, "I'D RATHER FIGHT THAN SWITCH"?

26 A. THERE WAS.

27 Q. REMEMBER?

28 A. IT WAS NOT ONE OF OURS.

4388

1 Q. TARRINGTON?

2 A. I THINK THAT'S WHAT IT WAS.

3 Q. THE PERSON HAD A BLACK EYE?

4 A. SOUNDS RIGHT.

5 Q. WAS IT EVER YOUR -- I HEARD THAT YOU WERE BRAND
6 MANAGER -- I WAS LISTENING CAREFULLY -- YOU WERE BRAND
7 MANAGER, INITIALLY, ON VIRGINIA SLIMS; IS THAT RIGHT?

8 A. WELL, INITIALLY, I WAS ASSISTANT BRAND MANAGER
9 ON VIRGINIA SLIMS. AT ONE POINT IN MY CAREER, I BECAME BRAND
10 MANAGER FOR VIRGINIA SLIMS, YES.

11 Q. THAT WAS THE FIRST OF THE PHILIP MORRIS BRANDS
12 IN WHICH YOU BECAME THE MANAGER?

13 A. NO. ACTUALLY, THE FIRST BRAND I WAS MANAGER ON
14 WAS ALPINE, AND THEN I WAS ALSO BRAND MANAGER OF PARLIAMENT
15 BEFORE I BECAME BRAND MANAGER OF VIRGINIA SLIMS.

16 Q. DID YOU EVER GET TO MARLBORO?
17 A. NO.
18 Q. YOU -- I THINK THE QUESTION WAS -- WENT LIKE
19 THIS: AN ACCUSATION HAS BEEN MADE HERE THAT PHILIP MORRIS
20 MARKETS TO KIDS. THAT WAS THE BEGINNING OF A SERIES OF
21 QUESTIONS TO YOU.
22 DO YOU REMEMBER THAT?
23 A. YESTERDAY, WE WERE TALKING ABOUT -- YES.
24 Q. YES. YOU'VE HEARD THAT ACCUSATION BEFORE?
25 A. YES, I HAVE.
26 Q. YOU'VE HEARD THAT ACCUSATION FOR HOW LONG?
27 A. I'VE HEARD THAT ACCUSATION FOR A LONG TIME.
28 MANY YEARS. I DON'T KNOW -- I CAN'T TELL YOU A DATE
4389
1 SPECIFIC, BUT CERTAINLY FOR A SUBSTANTIAL LENGTH OF TIME.
2 Q. WELL, WHAT ABOUT BEFORE YOU AGREED TO WORK FOR
3 PHILIP MORRIS, HAD YOU HEARD THAT PHILIP MORRIS WAS MARKETING
4 TO KIDS?
5 A. I DON'T BELIEVE I DID, NO.
6 Q. AS PART OF THE PRELIMINARIES IN THE QUESTIONING
7 OF YOU YESTERDAY ON DIRECT EXAMINATION ON THIS ISSUE, I THINK
8 THERE WAS SOME ACKNOWLEDGMENT ON YOUR PART THAT PEOPLE START
9 SMOKING YOUNG, RIGHT?
10 A. I BELIEVE SOME PEOPLE START SMOKING YOUNG, YES.
11 Q. NOT SOME --
12 A. MANY PEOPLE START SMOKING YOUNG.
13 Q. LET'S GET RID OF SOME, AND LET'S GET RID OF
14 MANY, LET'S GET RID OF MOST, AND LET'S GO TO ALMOST EVERYONE
15 STARTS SMOKING AS MINORS?
16 A. I DON'T KNOW THAT FOR A FACT, SO I CAN'T GET
17 RID OF IT. BUT I BELIEVE THAT A SIGNIFICANT NUMBER OF PEOPLE
18 DO START SMOKING YOUNG.
19 Q. AS THE SENIOR V.P. FOR CORPORATE AFFAIRS NOW,
20 WHAT DO YOU DO?
21 A. AS I DESCRIBED YESTERDAY, IN ADDITION TO BEING
22 PART OF THE SENIOR MANAGEMENT TEAM, AS FAR AS MY FUNCTION IS
23 CONCERNED, I DEAL WITH INTERNAL COMMUNICATIONS. THAT IS, TO
24 EMPLOYEES, EXTERNAL COMMUNICATIONS TO THE MEDIA AND OTHER
25 STAKEHOLDERS. MY DEPARTMENT IS RESPONSIBLE FOR CORPORATE
26 RESPONSIBILITY PROGRAMS AND PLANNING, COMMUNITY RELATIONS.
27 CHARITABLE CONTRIBUTIONS FOR PHILIP MORRIS USA. SO WE ARE IN
28 CHARGE OF ALL OF THOSE VARIOUS AREAS.
4390
1 Q. SO YOU'RE THE BOSS AS FAR AS THE COMPANY
2 DEALINGS WITH THE MEDIA ARE CONCERNED?
3 A. FOR PHILIP MORRIS USA, YES, I AM.
4 Q. YES. THAT'S WHAT I MEAN. I'M ON DOMESTIC
5 TOBACCO NOW. OKAY?
6 A. THAT'S --
7 Q. LET ME JUST -- I'M GOING TO BE TALKING ABOUT
8 THIS LATER, BUT YOU MENTIONED CHARITABLE CONTRIBUTIONS.
9 THOSE CHARITABLE CONTRIBUTIONS ARE PART OF A
10 PUBLIC RELATIONS CAMPAIGN, AREN'T THEY?
11 A. NOT NECESSARILY. PHILIP MORRIS USA HAS A
12 BUDGET FOR CHARITABLE CONTRIBUTIONS, AND THE FOCUS OF THAT
13 GIVING IS POSITIVE YOUTH DEVELOPMENT AS WELL AS COMMUNITY
14 RELATIONS.
15 Q. WELL, PHILIP MORRIS, THE BIG BAD -- THE BIG
16 COMPANY, BIG COMPANY, OF WHICH YOU ARE ONLY A PART, THEY
17 DON'T HAVE A SIMILAR CHARITABLE CONTRIBUTION PROGRAM?
18 A. YES, THEY DO.
19 MR. LEITER: I'M GOING TO OBJECT. WE'RE BEYOND THE
20 SCOPE OF DIRECT HERE.

21 THE COURT: OVERRULED.
22 Q. BY MR. PIUZE: BACK TO MR. PARISH.
23 DID YOUR WEBSITE GO UP ON WEDNESDAY,
24 OCTOBER 13TH, 1999, THE ORIGINAL WEBSITE?
25 A. IT WENT UP IN OCTOBER OF '99. I DON'T REMEMBER
26 IT BEING A WEDNESDAY, BUT IT VERY WELL MIGHT HAVE.
27 Q. AND THAT WAS PART OF A NEW CORPORATE PUBLIC
28 FACE THAT WAS BEING PRESENTED, CORRECT?
4391
1 A. WELL, IT WAS -- IT WAS PART OF OUR TRYING TO BE
2 MORE OPEN TO COMMUNICATE MORE OPENLY WITH CONSUMERS AND
3 SOCIETY, YES.
4 Q. TO PUT A MORE POSITIVE FACE UPON THE
5 CORPORATION?
6 A. WELL, IT WAS TO PUT FORWARD OUR PROGRAMS AND
7 OUR POLICIES ON ANY NUMBER OF ISSUES FOR SOCIETY, FOR THE
8 PUBLIC TO BE AWARE YOU.
9 Q. WAS IT TO PUT A MORE POSITIVE FACE ON THE
10 CORPORATION?
11 A. I THINK THAT'S ONE OF THE GOALS. BUT IT WAS
12 ALSO TO LET PEOPLE COME TO THE WEBSITE AND LEARN MORE ABOUT
13 PHILIP MORRIS, ITS PRODUCTS, ITS POLICIES AND ITS POSITIONS.
14 Q. WELL, THE WEBSITE WAS ONLY A PART OF WHAT WAS
15 ANNOUNCED ON OCTOBER 13, 1999, WASN'T IT?
16 A. THERE WERE OTHER THINGS THAT WERE ANNOUNCED ON
17 BEHALF OF THE CORPORATION, THAT'S RIGHT. AS FAR AS
18 PHILIP MORRIS USA WAS CONCERNED, OUR WEBSITE WAS THE ONLY
19 THING THAT WAS LAUNCHED THAT DAY.
20 Q. WELL, DIDN'T STEVE PARISH TELL THE MEDIA THAT
21 IN ADDITION TO THE WEBSITE, PHILIP MORRIS USA WAS GOING TO
22 START GIVING MONEY TO CHARITY?
23 A. NO. NO. I THINK THAT'S WRONG. PHILIP MORRIS
24 HAS A 45-YEAR TRADITION OF GIVING MONEY TO CHARITY. WE
25 DIDN'T START GIVING MONEY TO CHARITY ON OCTOBER 13TH, 1999.
26 WE'D GIVEN HUNDREDS OF MILLIONS OF DOLLARS TO CHARITY OVER
27 THE YEARS.
28 Q. DIDN'T STEVE PARISH TELL THE MEDIA THAT
4392
1 PHILIP MORRIS' BUDGET FOR CHARITABLE GIVING FOR THE NEXT YEAR
2 WAS GOING TO BE \$75 MILLION?
3 A. HE MIGHT HAVE. BUT THAT WOULD HAVE BEEN
4 CONSISTENT WITH THE AMOUNT OF MONEY THAT WE HAD BEEN GIVING
5 TO CHARITY OVER THE YEARS. IN FACT, SINCE 1990, WE'VE GIVEN
6 WELL OVER A BILLION DOLLARS TO CHARITY.
7 Q. DIDN'T STEVE PARISH TELL THE MEDIA ON
8 OCTOBER 13TH, 1999 THAT PHILIP MORRIS WAS GOING TO SPEND
9 \$100 MILLION A YEAR TELLING ALL OF THE PEOPLE THAT THEY WERE
10 GIVING 75 MILLION BUCKS A YEAR TO CHARITY?
11 A. WELL, I THINK YOU'RE MISCHARACTERIZING SOMEWHAT
12 WHAT MR. PARISH SAID.
13 WHAT HE ANNOUNCED THAT DAY WAS THAT WE WERE
14 GOING TO BE RUNNING SOME ADVERTISING ABOUT SOME OF OUR
15 ACTIVITIES AS IT RELATED TO CHARITABLE GIVING AS WELL AS
16 OTHER THINGS THAT WE WERE DOING. ONE OF THE ADS THAT WAS
17 LAUNCHED AT THAT TIME WAS AN AD THAT HAD TO DO WITH "WE CARD"
18 AND YOUTH SMOKING PREVENTION, SO IT WASN'T JUST ABOUT
19 CHARITY. IT WAS ABOUT OUR POSITION ON ANY NUMBER OF ISSUES,
20 INCLUDING OUR CHARITABLE GIVING, AS I SAID, HAD BEEN
21 CONSISTENT OVER THE LAST 45 YEARS.
22 Q. HAS PHILIP MORRIS IN THE LAST COUPLE OF YEARS
23 BEEN SPENDING MORE TELLING THE PEOPLE ABOUT ITS CHARITY THAN
24 IT'S ACTUALLY USED TO GIVE TO CHARITY?
25 A. IN THE LAST TWO YEARS, WE'VE SPENT SIGNIFICANT

26 FUNDS ON ADVERTISING, BUT OUR CHARITABLE BUDGET HAS BEEN
27 CHANGED AND HAS NOT BEEN DECREASED AS A RESULT OF ANYTHING
28 THAT WE'RE DOING IN ADVERTISING. AS I SAY, WE HAVE A LONG
4393

1 HISTORY AS A COMPANY WHO HAS BEEN GIVING TO CHARITIES IN OUR
2 COMMUNITIES.

3 Q. HERE'S WHAT I ASKED, THOUGH: IN THE LAST TWO
4 YEARS, HAS PHILIP MORRIS SPENT MORE MONEY TELLING THE PEOPLE
5 ABOUT WHAT IT GAVE TO CHARITY THAN WHAT IT ACTUALLY GAVE TO
6 CHARITY?

7 A. I BELIEVE IT'S ABOUT THE SAME. THAT WE'VE
8 SPENT ABOUT AS MUCH IN ADVERTISING AS WE HAVE IN CHARITABLE
9 DONATIONS, BECAUSE OUR CHARITY IS NOT JUST THE DOLLARS THAT
10 WE GIVE. WE ALSO GIVE SOME IN KIND SERVICES. WE ALSO
11 PROVIDE FOOD AND WATER AND OTHER THINGS. SO WHEN IT'S ALL
12 ADDED UP, IN FACT, WE'RE ONE OF THE BIGGER CHARITABLE GIVERS
13 IN AMERICA.

14 Q. SO IS THAT A YES?

15 A. I WOULD SAY IT'S ABOUT COMPARABLE, IS WHAT I
16 SAID.

17 Q. YOU KNOW WHAT ANONYMOUS GIVING IS, DON'T YOU?

18 A. I KNOW WHAT ANONYMOUS GIVING IS.

19 Q. WERE YOU PART OF THE TEAM THAT DECIDED THAT --
20 LET'S SAY, IT'S COMPARABLE. I'LL TAKE YOU AT YOUR WORD.
21 LET'S SAY, IT'S OPERABLE.

22 WERE YOU PART OF THE TEAM THAT DECIDED THAT FOR
23 EVERY BUCK YOU GAVE TO CHARITY, RATHER THAN GIVE A SECOND
24 BUCK TO CHARITY, YOU WERE GOING TO USE THAT TO GO ON THE AIR
25 TO TELL ALL THE PEOPLE HOW MUCH MONEY YOU WERE GIVING TO
26 CHARITY?

27 A. WELL, IT WASN'T ABOUT GIVING ANOTHER BUCK TO
28 CHARITY. WE CONTINUE OUR CHARITABLE GIVING. WE WILL ALWAYS
4394

1 CONTINUE OUR CHARITABLE GIVING.

2 BUT, YES, WE DECIDED THAT WE WANTED TO
3 COMMUNICATE ABOUT WHAT PHILIP MORRIS WAS ABOUT, THE SCOPE OF
4 THE COMPANY, THE FACT THAT WE WERE MORE THAN JUST A TOBACCO
5 COMPANY, AND THAT WE WERE MEMBERS OF THE COMMUNITY THAT
6 SUPPORTED ANY NUMBER OF DIFFERENT ACTIVITIES WITHIN
7 COMMUNITIES AND PROGRAMS.

8 Q. DID THIS HAVE ANYTHING TO DO WITH ALL OF THE
9 LITIGATION AND POTENTIAL LITIGATION OUTSTANDING AGAINST YOUR
10 COMPANY SO YOU COULD BUY A MORE POSITIVE IMAGE OUT THERE FOR
11 THE PUBLIC?

12 A. IT HAD NOTHING TO DO WITH LITIGATION. IT HAD
13 TO DO WITH OUR DESIRE TO COMMUNICATE WITH SOCIETY ABOUT
14 PHILIP MORRIS, ABOUT ITS PROGRAMS, ABOUT ITS POSITIONS. SO
15 WE STARTED TO RUN THE ADVERTISING. BUT IT HAD NOTHING TO DO
16 WITH LITIGATION.

17 Q. DO YOU KNOW ANYONE ELSE, INDIVIDUALS,
18 CORPORATIONS, GOVERNMENTS, ANYTHING, ANYPLACE, ANYWHERE IN
19 THE WORLD THAT SPENDS AS MUCH MONEY BRAGGING ABOUT WHAT IT
20 GIVES TO CHARITY AS IT ACTUALLY DOESN'T GIVE IT?

21 MR. LEITER: I'M GOING TO OBJECT TO THE ARGUMENTATIVE
22 QUESTION.

23 THE COURT: THE WORD "BRAGGING."

24 Q. BY MR. PIUZE: I'LL WITHDRAW THE WORD
25 "BRAGGING" AND SAY, "PROCLAIMING."

26 A. WELL, I KNOW A LOT OF OTHER COMPANIES AND
27 INDUSTRIES CERTAINLY TALK ABOUT WHAT THEY DO, WHAT THEY GIVE,
28 HOW THEY ARE GOOD CORPORATE CITIZENS. I DON'T KNOW WHAT THE
4395

1 BUDGETS ARE OF ANY COMPANY, PER SE, BUT IT IS NOT UNUSUAL FOR

2 CORPORATIONS TO COMMUNICATE ABOUT THEIR WORKS IN THE AREA OF
3 CORPORATE RESPONSIBILITY.
4 Q. HAVE YOU, AS PART OF YOUR JOB, GONE OUT TO
5 CHECK THROUGH YOUR POLLING, YOUR FOCUS GROUPS, YOUR TEST
6 MARKETS, TO SEE IF YOUR PROCLAMATIONS ABOUT CHARITABLE GIVING
7 HAVE BEEN SUCCESSFUL IN HELPING THE COMPANY'S IMAGE?
8 A. WE CERTAINLY HAVE DONE SOME RESEARCH. AND I
9 CAN TELL THAT YOU EARNING CREDIBILITY IS A VERY SLOW PROCESS.
10 AND I DON'T THINK WE'RE GOING TO SEE CHANGES AMONG THE PUBLIC
11 IN THEIR ATTITUDE ABOUT PHILIP MORRIS SHORT-TERM.
12 I THINK I SAID YESTERDAY IN MY TESTIMONY THAT I
13 WAS AWARE -- AND I KNOW MY COLLEAGUES WERE AWARE -- THAT TO
14 EARN BACK CREDIBILITY, WE'RE GOING TO HAVE TO BE CONSISTENT
15 IN OUR ACTIONS AND COMMITTED TO DOING WHAT WE SAY WE'RE GOING
16 TO DO, AND PEOPLE ARE GOING TO JUDGE US BASED ON WHAT WE DO.
17 SO WE DON'T SEE THAT PUBLIC OPINION IS GOING TO MAKE ANY
18 QUICK TURNAROUNDS AS FAR AS OUR COMPANY IS CONCERNED.
19 Q. THE ANSWER TO THE QUESTION WAS YES, YOU'VE GONE
20 OUT TO CHECK IT OUT, HUH?
21 A. WELL, YES. WE CERTAINLY TRACK PUBLIC OPINION
22 IN RELATIONSHIP TO THE ADVERTISING THAT WE'VE DONE. BUT AS I
23 SAID, WE DON'T EXPECT TO SEE PUBLIC OPINION CHANGE QUICKLY,
24 NOR FOR US TO ACHIEVE CREDIBILITY IN THE SHORT-TERM.
25 Q. ONE OF THE PEOPLE -- CORRECT ME IF I'M WRONG
26 NOW, BECAUSE THESE ACCUSATIONS THAT WERE MADE HERE, THEY WERE
27 NOTHING NEW TO YOU -- LET'S JUST ESTABLISH THAT AGAIN --
28 NOTHING NEW TO YOU AT ALL?

4396

1 A. CAN YOU BE SPECIFIC?
2 THE COURT: THAT'S A LITTLE BIT BROAD.
3 MR. PIUZE: SURE. I APOLOGIZE. BAD QUESTION.
4 Q. MR. LEITER, TO GET YOU -- AS HE WAS STARTING
5 HIS QUESTIONING OF YOU ON THIS PARTICULAR SUBJECT SAID,
6 ACCUSATIONS HAVE BEEN MADE HERE OF MARKETING TO KIDS.
7 YOU'VE BEEN ACCUSED OF THAT WITHIN THE LAST
8 YEAR BY THE UNITED STATES DEPARTMENT OF JUSTICE, HAVEN'T YOU?
9 A. BY THE UNITED STATES DEPARTMENT OF JUSTICE?
10 Q. YES.
11 MR. LEITER: YOUR HONOR, I'M GOING TO OBJECT.
12 THE WITNESS: I'M NOT --
13 THE COURT: YES. SUSTAINED AT THIS POINT.
14 MR. PIUZE: YOUR HONOR --
15 THE COURT: I DON'T KNOW WHETHER THAT'S TRUE OR FALSE,
16 BUT AT THIS POINT, IT'S IRRELEVANT WITHOUT A FOUNDATION.
17 Q. BY MR. PIUZE: WHO'VE MADE THOSE -- LET'S DO
18 IT THIS WAY.
19 WHO'VE MADE THOSE ACCUSATIONS AGAINST YOU
20 RECENTLY, LET'S SAY, LAST THREE OR FOUR YEARS?
21 MR. LEITER: SAME OBJECTION. RELEVANCE.
22 THE COURT: I HAVE THE SAME PROBLEM.
23 SUSTAINED AT THIS POINT.
24 Q. BY MR. PIUZE: HAS YOUR COMPANY BEEN ACCUSED
25 BY PUBLIC OFFICIALS OF TARGETING MINORS FOR SELLING OF
26 CIGARETTES WITH --
27 MR. LEITER: YOUR HONOR, SAME OBJECTION.
28 THE COURT: OVERRULED.

4397

1 Q. BY MR. PIUZE: -- WITHIN, SAY, THE LAST -- PICK
2 A YEAR -- 1998 FROM 1998 ON?
3 A. IF YOU MEAN -- IF YOU CAN BE A LITTLE BIT MORE
4 SPECIFIC ABOUT PUBLIC OFFICIALS.
5 Q. I CAN.
6 A. ALL RIGHT.

7 Q. REPRESENTATIVE JOHN CONYERS OF MICHIGAN.
8 A. IT'S POSSIBLE. I DON'T KNOW SPECIFICALLY THOSE
9 CIRCUMSTANCES, BUT THAT'S POSSIBLE.
10 Q. ATTORNEY GENERAL DAN LUNGREN OF CALIFORNIA?
11 A. I BELIEVE THAT IS ACCURATE.
12 Q. THE STATE SUPERINTENDENT OF SCHOOLS IN
13 CALIFORNIA?
14 A. YES.
15 Q. OKAY. SO ANYWAY, ANY ACCUSATIONS THAT ARE MADE
16 HERE AREN'T EXACTLY A MEMBER OF THE KEY CLUB, RIGHT?
17 A. MEMBER OF A --
18 Q. NOT AN EXCLUSIVE ORGANIZATION?
19 A. NO.
20 Q. YOU DON'T THINK I'M UNFAIRLY PICKING ON YOU?
21 A. I DON'T THINK YOU'RE PICKING ON ME.
22 Q. NOW, YOUR RESPONSE WAS -- CORRECT ME IF I'M
23 WRONG -- NOT ONLY DON'T YOU NOW, BUT YOU DIDN'T THEN, DIDN'T
24 BEFORE, NEVER DID, AND YOU'VE NEVER SEEN IT HAPPEN WHILE
25 YOU'VE BEEN AT PHILIP MORRIS?
26 A. WHAT I SAID WAS THAT WE DID NOT MARKET, AS LONG
27 AS I'VE BEEN AT PHILIP MORRIS, WE DID NOT MARKET OUR PRODUCT
28 TO KIDS. I SAID THAT THAT WAS NOT NECESSARILY THE PERCEPTION
4398
1 OUT THERE, BUT THAT WE HAD A POLICY OF NOT MARKETING OUR
2 PRODUCTS TO KIDS.
3 Q. NOW, I'M GOING TO QUESTION YOU ABOUT THAT. I'M
4 GOING TO GO IN TWO DIFFERENT DIRECTIONS, BUT LET ME GO IN THE
5 PRACTICAL DIRECTION FIRST, IF I COULD.
6 GIVE ME A NUMBER THAT YOU'RE COMFORTABLE
7 WITH --
8 A. ALL RIGHT.
9 Q. -- AS TO WHAT PERCENTAGE OF SMOKERS START WHEN
10 THEY'RE KIDS?
11 A. I COULDN'T EVEN BEGIN TO GUESS AT A PERCENTAGE.
12 I REALLY DON'T KNOW BECAUSE, QUITE FRANKLY, WE DON'T DO
13 RESEARCH AMONG KIDS.
14 WE ONLY DO OUR RESEARCH, AS FAR AS MARKETING IS
15 CONCERNED, AMONG ADULT NUMBERS, SO I DON'T REALLY HAVE THAT
16 NUMBER. I'VE LOOKED AT WHAT THE UNIVERSITY OF MICHIGAN HAS
17 DONE. I KNOW THE INCIDENTS OF HOW MANY KIDS HAVE HAD ONE
18 CIGARETTE IN THE LAST 30 DAYS, AND IT'S ABOUT, I DON'T KNOW,
19 ABOUT 20 OR 30 PERCENT. BUT I DON'T KNOW EXACTLY HOW MANY
20 KIDS START SMOKING UNDERAGE.
21 Q. WE'VE GOT PHILIP MORRIS' OWN DOCUMENTS IN
22 EVIDENCE IN THIS TRIAL RIGHT HERE. THEY HAVE TO DO WITH
23 KEEPING TRACK OF TEEN SMOKING GOING BACK -- THE ONE I'VE GOT
24 IN MY HAND IS JULY 25, 1974, AND I THINK --
25 MR. LEITER: AGAIN, I'M GOING TO OBJECT TO
26 CHARACTERIZING THE DOCUMENTS.
27 THE COURT: ALL RIGHT. VERY WELL. THEN THEY CAN
28 SPEAK FOR THEMSELVES.
4399
1 Q. BY MR. PIUZE: JULY 25, 1974, PHILIP MORRIS
2 USA, 100 PARK AVENUE.
3 IS THAT YOUR CURRENT PLACE OF BUSINESS?
4 A. IS IT MY CURRENT PLACE OF BUSINESS -- NO --
5 WAS --
6 Q. THAT'S THE OLD ADDRESS?
7 A. THAT'S THE OLD ADDRESS.
8 Q. AND YOU'VE MOVED TO WHAT?
9 A. 120 PARK AVENUE.
10 Q. 120 PARK AVENUE.
11 PHILIP MORRIS (READING):

12
13 "COMMISSIONED THE ROPER
14 ORGANIZATION TO UNDERTAKE A SPECIAL PERSONAL
15 INTERVIEW STUDY AMONG A NATIONWIDE SAMPLING
16 OF SMOKERS UP TO THE AGE OF 24 . . ."
17
18 BY ANY CHANCE, DO YOU KNOW ANYTHING ABOUT THIS?
19 A. I'VE SEEN THAT DOCUMENT BEFORE.
20 Q. AND YOU'RE FAMILIAR WITH GOING TO HANGOUTS,
21 DRIVE-IN'S, BOWLING ALLEYS, MILITARY BASES, BEACHES,
22 ET CETERA, TO SEEK OUT PEOPLE TO TALK TO?
23 A. YES, I'VE SEEN THAT DOCUMENT.
24 Q. AND YOU'RE FAMILIAR WITH PHILIP MORRIS KEEPING
25 TABS ON WHO'S SMOKING WHAT, WHETHER THEY'RE OVER 18 OR UNDER
26 18, RIGHT?
27 A. I CAN'T SEE WHAT THAT SAYS.
28 Q. HERE.
4400
1 A. I'M SORRY, BUT I CAN'T --
2 Q. DON'T BE SORRY.
3 A. THANK YOU.
4 YES. I SEE THIS.
5 I CAN TELL YOU THAT OUR POLICY FOR MANY YEARS
6 HAS BEEN ONLY TO INTERVIEW THOSE ADULT SMOKERS 18 YEARS OF
7 AGE OR OLDER.
8 Q. I KNOW. BUT THAT WAS SIX YEARS BEFORE -- THAT
9 WAS SIX YEARS AFTER YOU GOT THERE?
10 A. YES, IT WAS.
11 Q. ANYWAY --
12 A. AND MOST OF THIS -- MOST OF THIS IS 18 TO 24,
13 BUT --
14 Q. BUT WHAT?
15 A. BUT THERE IS A TAB IN HERE, YOU'RE CORRECT.
16 Q. PHILIP MORRIS KNEW WHAT PERCENTAGE OF THE
17 MARKET IT HAD FOR UNDER 18-YEAR-OLDS WITH ITS MARLBORO BRAND,
18 CORRECT?
19 A. WELL, THERE WAS AN INDICATION IN THIS RESEARCH
20 STUDY THAT WAS DONE, BUT THE FACT IS THAT OUR MARKETING
21 PROGRAMS WERE BASED ON MARKETING TO PEOPLE 18 YEARS OF AGE
22 AND OVER. WE DID NOT USE ANY INFORMATION TO MARKET OUR
23 PRODUCT TO UNDERAGE SMOKERS.
24 Q. WELL, ACTUALLY, I HADN'T GOTTEN THERE YET. WE
25 WERE JUST STARTING WITH -- I THINK I ASKED A PRELIMINARY
26 QUESTION ABOUT WHAT PERCENTAGE, OR WHEN DO PEOPLE START AND
27 IF YOU KEEP TABS, AND YOU SAID, WE DON'T EVEN KEEP TABS.
28 I THINK THAT'S HOW WE GOT ON TO THIS ISSUE.
4401
1 A. AND WE HAVE NOT FOR MANY YEARS. THIS IS --
2 THIS IS A DOCUMENT FROM 1974. WE DON'T DO RESEARCH, WITH THE
3 EXCEPTION OF OUR YOUTH SMOKING PREVENTION RESEARCH NOW, WITH
4 ANYONE UNDER THE AGE OF 18.
5 Q. ALL RIGHT. WELL, LET ME SHOW YOU ONE, IF I
6 COULD. THIS IS EXHIBIT 218. THIS IS FROM MARCH 31, 1991.
7 YOU'VE BEEN AT THE COMPANY 12 YEARS BY THEN.
8 AND HERE'S ONE THAT TALKS ABOUT TRACKING
9 REGULAR SMOKERS BETWEEN '68 AND '74 STARTING AT THE AGES OF
10 12.
11 THAT'S PHILIP MORRIS INTERNAL DOCUMENT HERE,
12 ISN'T IT?
13 A. I DON'T KNOW. I'D HAVE TO LOOK AT THAT
14 DOCUMENT TO SEE EXACTLY WHAT IT IS.
15 Q. OKAY. HERE.
16 AND THOSE PAPER CLIPS WILL BE A GUIDE TO WHERE

17 I'M GOING, BUT YOU CAN LOOK AT ANY PAGE YOU WANT.
18 WOULD YOU TELL ME THE NUMBER ON THE LOWER
19 RIGHT-HAND CORNER OF THE FRONT PAGE, PLEASE.
20 A. 218.
21 Q. OKAY. THANK YOU. SORRY TO INTERRUPT.
22 A. THAT'S ALL RIGHT.
23 Q. I'M JUST GOING TO SHOW THE JURY 218-3, WHICH
24 WAS THE TABLE UP ON THE ELMO THERE BEFORE I GAVE IT TO YOU SO
25 WE CAN BOTH WATCH AT THE SAME TIME.
26 ANYWAY, CAN YOU FIND THIS PAGE?
27 IT'S ONE OF THE CLIPPED ONES, AND THEN YOU CAN
28 HAVE IT IN FRONT OF YOU AND WE CAN HAVE IT IN FRONT OF US.
4402

1 I'LL ASK YOU ABOUT IT. IT'S THE TABLE. IT'S
2 IN YELLOW.
3 A. IS IT TABLE 1?
4 Q. YES. IT SHOULD BE HIGHLIGHTED IN YELLOW.
5 DO YOU HAVE IT?
6 A. I BELIEVE SO.
7 Q. OKAY. ANYWAY, WAS PHILIP MORRIS OR WAS
8 PHILIP MORRIS NOT TRACKING THE "PREVALENCE, TRENDS,
9 IMPLICATION AND RELATED DEMOGRAPHIC TRENDS" OF YOUNG SMOKERS
10 DOWN TO THE AGE OF 12 YEARS OLD STARTING THE YEAR BEFORE YOU
11 CAME TO THE COMPANY AND GOING THROUGH AT LEAST FIVE YEARS
12 AFTER THAT?
13 A. ACCORDING TO THIS DOCUMENT THAT WAS COMPILED BY
14 MYRON JOHNSON, WHO WAS A DEMOGRAPHER WITH PHILIP MORRIS IN
15 THOSE YEARS. HE TRACKED TRENDS. BUT I GUESS MY COMMENT IS,
16 YES, HE DEFINITELY TRACKED THE TRENDS. BUT THESE WERE NOT
17 USED TO CREATE MARKETING PROGRAMS. THEY WERE NOT USED BY THE
18 MARKETING DEPARTMENT.
19 THESE WERE PREDICTORS OF SIZE OF MARKET,
20 ET CETERA, BECAUSE MR. JOHNSON WAS A DEMOGRAPHER, AND THESE
21 NUMBERS WERE USED TO PROJECT POTENTIAL SIZE OF MARKET FOR
22 MANUFACTURING AND OTHER THINGS. THEY WERE NOT USED TO BUILD
23 MARKETING PROGRAMS.
24 Q. PLEASE TELL -- REMIND US NOW. IN 1969 WHEN YOU
25 WENT TO THE COMPANY, YOUR JOB TITLE WAS WHAT?
26 A. MY JOB TITLE WAS -- WELL, I STARTED IN CANADA
27 WITH THE COMPANY, AND MY JOB TITLE WAS MANAGER OF -- IT
28 WAS -- I THINK EMPLOYEE RELATIONS OR COMMUNITY RELATIONS OR
4403

1 SOMETHING -- BASICALLY, WHAT I DID WAS, I WAS RESPONSIBLE FOR
2 INTERNAL COMMUNICATIONS AS WELL AS SPONSORSHIPS IN OUR
3 CANADIAN COMPANY.
4 Q. WHEN DID YOU COME TO THE U.S. FOR
5 PHILIP MORRIS?
6 A. IN 1970. END OF 1970.
7 Q. AND WHAT WAS YOUR JOB TITLE THEN?
8 A. IT WAS SUPERVISOR OF EVENT PROMOTIONS.
9 Q. AND HOW LONG DID THAT STAY YOUR JOB TITLE?
10 A. THAT STAYED MY JOB UNTIL 1972, THE MIDDLE OF
11 1972 WHEN I BECAME ASSISTANT BRAND MANAGER OF VIRGINIA SLIMS.
12 Q. OKAY. WELL, LET'S STOP IN 1972.
13 HOW CAN YOU SPEAK FOR THE CORPORATION ABOUT
14 WHAT IT WAS DOING IN REGARD TO MINORS SMOKING ALL THE WAY
15 DOWN TO THE AGES OF 12 FROM 1969, '70, '71 AND '72 GIVEN WHAT
16 YOU'VE TOLD US ABOUT YOUR JOB DESCRIPTION?
17 A. WELL, I CAN ONLY SPEAK BASED ON WHAT I KNOW
18 HISTORICALLY. I CAN SPEAK BASED ON WHAT I UNDERSTAND --
19 UNDERSTOOD OUR POLICIES TO BE, BECAUSE I DID JOIN THE
20 MARKETING DEPARTMENT IN 1972. AND I KNOW HOW WE WERE ASKED
21 TO DEVELOP OUR PROGRAMS, THE PORTIONS WE TOOK AND THE WAY WE

22 FIELD OUR PROGRAMS TO MAKE SURE THAT WE WERE NOT MARKETING
23 OUR PRODUCTS TO KIDS.
24 Q. WELL, IS THERE A DIFFERENCE BETWEEN MARKETING
25 AS YOU'RE USING IT NOW AND SELLING?
26 A. WELL, I THINK MR. LEITER MADE CLEAR YESTERDAY
27 THAT PHILIP MORRIS DOES NOT DIRECTLY SELL PRODUCT TO ANYBODY.
28 WE SELL OUR PRODUCT TO A DISTRIBUTOR WHO THEN SELLS IT TO THE
4404

1 RETAILER AND THE RETAILER MAKES IT AVAILABLE FOR SALE IN HIS
2 OUTLET. WE DON'T HAVE DIRECT CONTACT IN A SELLING CAPACITY
3 WITH CONSUMERS. SO IT'S OUR MARKETING PROGRAMS THAT I'M
4 TALKING ABOUT.

5 Q. DO KIDS GET A DISCOUNT?

6 A. KIDS GET A DISCOUNT?

7 Q. YEAH.

8 THE COURT: SUSTAINED. NO FOUNDATION.

9 Q. BY MR. PIUZE: THE POINT I'M TRYING TO MAKE IS,
10 IN 1968 OR '69 OR '70 OR '71 OR '72 -- AND I CHOOSE TO STOP
11 THERE FOR NOW -- CHILDREN PAID JUST AS MUCH FOR CIGARETTES AS
12 ADULTS WHEN THEY BOUGHT CIGARETTES, RIGHT?

13 MR. LEITER: OBJECTION. FOUNDATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: I WOULD HAVE TO ASSUME SO, YES.

16 Q. BY MR. PIUZE: RIGHT. THE PROFIT FOR A PACK
17 WAS JUST THE SAME WHETHER IT WAS A 12-YEAR-OLD BUYING IT OR
18 AN 82-YEAR-OLD BUYING IT?

19 A. AGAIN, WE DID NOT SELL PRODUCT DIRECTLY TO
20 ANYBODY. WE SELL OUR PRODUCT TO A DISTRIBUTOR WHO IN TURN
21 SELLS IT TO A RETAILER, AND IT IS -- SO WE DON'T SELL
22 DIRECTLY TO ANY CONSUMER.

23 Q. THE PROFIT PHILIP MORRIS MAKES OFF OF A PACK OF
24 CIGARETTES WHEN IT SELLS TO THE DISTRIBUTOR IS THE SAME
25 WHETHER THAT CIGARETTE PACKAGE WINDS UP IN THE POCKET OF A
26 12-YEAR-OLD OR A 22-YEAR-OLD OR 42-YEAR-OLD OR A 92-YEAR-OLD,
27 RIGHT?

28 A. THAT WOULD BE RIGHT, YES.

4405

1 Q. ALL RIGHT. ANYWAY, BETWEEN 1968 -- LET'S NOT
2 STOP AT '72 NOW -- 1968 AND 1974, IT LOOKED LIKE REALLY YOUNG
3 KIDS WERE SMOKING MORE AND MORE AND MORE, DOESN'T IT?

4 A. I CAN'T SEE THE --

5 Q. WELL, YOU'VE GOT THE SAME THING RIGHT IN FRONT
6 OF YOU.

7 A. I'LL OPEN IT UP.

8 Q. IT'S GOT A PAPER CLIP ON IT AND IT'S IN YELLOW.

9 IT'S TABLE 1.

10 A. ACCORDING TO THIS TABLE?

11 Q. ACCORDING TO THIS TABLE, YES.

12 A. ACCORDING TO THIS TABLE, YES.

13 Q. ONE OF THE REASONS THAT YOU SAY THAT
14 PHILIP MORRIS DOES NOT WANT TO MARKET TO KIDS IS WHAT?

15 A. WELL, NUMBER ONE, IT'S ILLEGAL.

16 NUMBER TWO, IT'S A DANGEROUS PRODUCT, AND KIDS
17 SHOULD NOT MAKE A DECISION ABOUT DANGEROUS PRODUCTS. THAT IS
18 SOMETHING THAT ONLY ADULTS SHOULD MAKE A DECISION ABOUT WHEN
19 THEY HAVE ALL THE INFORMATION AND THEY'RE ABLE TO MAKE A
20 DECISION.

21 AND WE JUST DON'T THINK IT'S RIGHT FOR KIDS TO
22 SMOKE, SO WE DON'T WANT TO MARKET OUR PRODUCTS TO KIDS. WE
23 DON'T WANT KIDS TO SMOKE. AND WE DON'T WANT TO BE A COMPANY
24 THAT MARKETS TO KIDS.

25 Q. SEE IF YOU'D AGREE WITH THIS: GIVEN THE FACT
26 THAT CIGARETTES ARE HARMFUL, AND GIVEN THE FACT THAT

27 CIGARETTES ARE ADDICTIVE, SOME YOUNG KID, 12, 13, 14 YEARS
28 OLD WHO PICKS UP A CIGARETTE AND STARTS SMOKING SOME
4406

1 CIGARETTES MIGHT GET HOOKED, MIGHT NOT BE ABLE TO EXERCISE
2 FREE WILL BECAUSE IT'S ADDICTIVE, AND BEFORE YOU KNOW IT,
3 THIS KID IS SMOKING AND SMOKING AND SMOKING A LOT OF
4 CIGARETTES.

5 DOES THAT SOUND VALID?

6 MR. LEITER: OBJECTION. CALLS FOR SPECULATION. IT'S
7 ARGUMENTATIVE.

8 THE COURT: OVERRULED.

9 Q. BY MR. PIUZE: DOES THAT SOUND LIKE A REASON

10 WHY PHILIP MORRIS DOESN'T WANT KIDS TO SMOKE?

11 A. WELL, I THINK ESSENTIALLY WHAT I SAID WAS THAT
12 WE DON'T WANT KIDS TO SMOKE, ONE, BECAUSE IT'S ILLEGAL; TWO,
13 BECAUSE IT IS A PRODUCT THAT HAS HEALTH EFFECTS AND CAUSES
14 DISEASE; AND WE DON'T THINK THAT KIDS SHOULD MAKE DECISIONS
15 ABOUT ANY RISKY BEHAVIORS, INCLUDING SMOKING CIGARETTES.

16 Q. EVEN THOUGH WE'RE IN A COURT OF LAW HERE, I'M
17 GOING TO BE PRESUMPTUOUS NOW TO SAY, FORGET THE FACT IT'S
18 ILLEGAL.

19 A. ALL RIGHT. I'LL FORGET THE FACT.

20 Q. FORGET --

21 A. ALL RIGHT. I'LL FORGET THE FACT IT'S ILLEGAL.

22 Q. IF IT WASN'T ILLEGAL, CERTAINLY, YOU WOULDN'T
23 SELL -- PHILIP MORRIS WOULDN'T SELL IT TO KIDS?

24 A. NO. I'M TELLING YOU, PHILIP MORRIS DOESN'T
25 WANT KIDS TO SMOKE, PERIOD.

26 Q. LET'S GO TO THE REASON.

27 THE REASON IS, BECAUSE KIDS DON'T HAVE THE
28 MATURITY TO UNDERSTAND WHAT THEY'RE GETTING INTO, RIGHT?

4407

1 A. THAT'S RIGHT. I DON'T THINK THE KIDS SHOULD
2 MAKE ANY DECISIONS ABOUT ANY RISKY BEHAVIORS, INCLUDING
3 SMOKING CIGARETTES.

4 Q. I DON'T KNOW HOW THINGS STAND NOWADAYS, BUT
5 IN NEW YORK STATE, A KID CAN'T EVEN DRIVE A CAR UNTIL HE'S
6 18, CAN'T HE OR SHE?

7 A. YOU CAN GET A JUNIOR LICENSE WHEN YOU'RE 16,
8 BUT I'M NOT SURE. IT'S BEEN A LONG TIME SINCE I'VE BEEN THAT
9 YOUNG, SO I DON'T KNOW.

10 Q. ME, TOO. USED TO BE IN NEW YORK STATE, 18 FOR
11 A DRIVER'S LICENSE, RIGHT?

12 A. I THINK FOR A FULL LICENSE. I THINK YOU CAN
13 GET A LEARNER'S PERMIT BEFORE YOU'RE 18.

14 Q. ANYWAY, THE FACT THAT IT'S ADDICTIVE, DOES THAT
15 PLAY INTO WHY YOU DON'T WANT KIDS TO SMOKE?

16 A. THAT CERTAINLY PLAYS INTO IT AS WELL AS THE
17 HEALTH HAZARDS OF SMOKING. IT IS A RISKY BEHAVIOR, AND IT IS
18 NOT SOMETHING THAT I THINK KIDS SHOULD MAKE DECISIONS ABOUT.

19 Q. OKAY. LET ME JUST -- JUST TO SORT OF SEE IF I
20 CAN GET WHERE I'M GOING.

21 LET ME JUST GIVE YOU A HYPOTHETICAL. WHAT IF
22 SMOKING WAS JUST AS DANGEROUS AS IT IS, BUT IT WASN'T
23 ADDICTIVE AT ALL; AND SOMEONE COULD HAVE A PUFF OR TWO OR TEN
24 OR HOWEVER MANY, BUT PUT THEM DOWN ANYTIME THEY WANTED; THERE
25 WAS NO ADDICTIVE QUALITY WHATSOEVER.

26 THE COURT: STOP THE HYPOTHETICAL. SUSTAINED.

27 Q. BY MR. PIUZE: IN 1981, PHILIP MORRIS PUBLISHED
28 INTERNALLY THE FACT THAT OVER THE COURSE OF SIX YEARS THAT IT
4408

1 STUDIED THE SITUATION, THE PERCENTAGE OF YOUNG SMOKERS HAD
2 RISEN CONSIDERABLY, RIGHT?

3 MR. LEITER: OBJECT TO THE CHARACTERIZATION OF THE
4 DOCUMENT. THE DOCUMENT SPEAKS FOR ITSELF.
5 THE COURT: OVERRULED.
6 IS THAT YOUR UNDERSTANDING, MA'AM?
7 THE WITNESS: BASED ON THAT DOCUMENT, THERE WAS AN
8 INCREASE IN THE INCIDENCE OF YOUTH SMOKING OVER THOSE YEARS.
9 Q. BY MR. PIUZE: AND FROM THE SAME STUDY THAT
10 YOU'VE GOT THERE, I'M GOING TO SHOW YOU 218-1.
11 A. DO I HAVE THAT HERE AS WELL?
12 Q. YOU DO. AND IT'S ALSO CLIPPED. AND IT'S ALSO
13 IN YELLOW.
14 THE COURT: MR. PIUZE. JUST A LITTLE BIT SO THAT THE
15 COURT CAN JUST TAKE A WINK.
16 ALL RIGHT. THAT'S FINE. THANK YOU, SIR.
17 MR. LEITER: IF I MAY, THERE'S A BATES NUMBER. IT
18 APPEARS ON THE BOTTOM OF THAT PAGE THAT'S ON THE BOARD,
19 MR. PIUZE. IF YOU'D READ THE LAST TWO NUMBERS, MAYBE THAT
20 WILL HELP THE WITNESS.
21 MR. PIUZE: I CAN FIND IT WAY FASTER THAN I CAN READ
22 THAT LONG NUMBER.
23 Q. HERE'S WHAT I'M INTERESTED IN. THE TOP THING
24 THAT'S BEEN YELLOWED OUT.
25 (READING:)
26
27 "WE WILL NO LONGER BE ABLE TO
28 RELY ON A RAPIDLY INCREASING POOL OF
4409
1 TEENAGERS FROM WHICH TO REPLACE SMOKERS."
2
3 SO THAT'S THE FIRST PART OF THIS DOCUMENT THAT
4 I WANT TO TALK ABOUT.
5 ARE YOU READY?
6 A. I JUST WANT TO READ THE WHOLE THING THAT LEADS
7 UP TO IT TO GET IT IN CONTEXT.
8 OKAY.
9 Q. NOW, WHO IS THIS PERSON AGAIN WHO WROTE THIS?
10 A. HIS NAME WAS MYRON JOHNSON. AND HE WAS A
11 DEMOGRAPHER.
12 Q. WHAT'S A DEMOGRAPHER; SOMEONE WHO MAKES MAPS?
13 A. NO. SOMEONE WHO TRACKS DEMOGRAPHICS FOR
14 PLANNING PURPOSES. HE WAS NOT A MARKETING PERSON. HE WAS
15 SOMEONE WHO, AS I SAY, TRACKED DEMOGRAPHICS FOR PLANNING
16 PURPOSES AS FAR AS WHAT OUR MANUFACTURING NEEDS WOULD BE,
17 FACILITIES PLANNING, THAT KIND OF THING.
18 Q. GOOD ENOUGH. SO THIS GUY IS TELLING
19 PHILIP MORRIS MAYBE HOW MANY NEW FACTORIES THEY MAY HAVE TO
20 BUILD OR NOT BUILD, AND HOW MANY NEW TOBACCO FIELDS THEY HAVE
21 TO PLANT OR NOT PLANT, OR HOW MANY TRUCKS THEY HAVE TO BUY OR
22 NOT BUY, AND ONE OF THE THINGS HE'S SAYING IS, IN THE FUTURE,
23 WE'RE NOT GOING TO BE ABLE TO RELY ON ALL OF THESE TEENAGERS
24 TO REPLACE OUR SMOKERS?
25 RIGHT?
26 A. THAT'S WHAT THIS SAYS, YES.
27 Q. WELL, LET'S TALK ABOUT THE WORD "RELY."
28 ACCORDING TO THIS DEMOGRAPHER, AT LEAST,
4410
1 PHILIP MORRIS HAS BEEN RELYING ON TEENAGE SMOKERS?
2 A. WELL, AGAIN, MR. JOHNSON WAS NOT PART OF THE
3 MARKETING DEPARTMENT. I DON'T KNOW HOW MUCH HE KNEW OR
4 DIDN'T KNOW ABOUT OUR POLICIES OF HOW WE MARKETED OUR
5 PRODUCT, BUT AT LEAST FROM MY PERCEPTION OF THE TIME THAT I
6 WAS THERE, WE DID NOT SEEK UNDERAGE SMOKERS. WE DID NOT
7 MARKET TO UNDERAGE SMOKERS, AND WE DID NOT WANT KIDS SMOKING

8 OUR PRODUCT.
9 Q. SO LET'S GO TO THE SECOND THING THAT'S
10 HIGHLIGHTED ON THE BOTTOM.
11 (READING:)
12
13 "BECAUSE OF OUR HIGH SHARE OF
14 THE MARKET AMONG THE YOUNGEST SMOKERS,
15 PHILIP MORRIS WILL SUFFER MORE THAN THE OTHER
16 COMPANIES FROM THE DECLINE IN THE NUMBER OF
17 THAT TEENAGE SMOKERS."
18
19 I GOT THAT RIGHT, DIDN'T I?
20 A. THAT'S WHAT HE'S WRITTEN HERE.
21 Q. OKAY. WELL, WHERE DOES HE -- I KNOW YOUR
22 POSITION, WHATEVER HE'S SAYING, HE'S A FREE AGENT, RIGHT?
23 IS THAT YOUR POSITION?
24 A. WELL, I CAN'T PUT MYSELF INTO MR. JOHNSON'S
25 HEAD AS TO WHAT HE'S SAYING OR WHAT HE ISN'T SAYING. I'M
26 TELLING YOU WHAT HIS JOB WAS, WHAT HE DID FOR PHILIP MORRIS.
27 AND I'M ALSO TELLING YOU AS A MEMBER OF THE MARKETING TEAM
28 FROM 1972 ONWARD WHAT OUR POLICIES WERE AND THE WAY WE
4411
1 CONDUCTED OUR POSITION.
2 Q. WHETHER HE'S RIGHT OR WRONG, WHERE DOES THIS
3 INFORMATION COME FROM ABOUT THE HIGH SHARE OF THE MARKET,
4 PHILIP MORRIS' HIGH SHARE OF THE MARKET AMONG THE YOUNGEST
5 SMOKERS?
6 WHERE'S THAT INFORMATION?
7 MR. LEITER: CALLS FOR SPECULATION.
8 THE WITNESS: YEAH. I --
9 THE COURT: HOLD ON.
10 SUSTAINED.
11 Q. BY MR. PIUZE: I DON'T WANT YOU TO SPECULATE,
12 SO LET'S GO BACK TO THIS EARLIER DOCUMENT. READY?
13 THIS ONE RIGHT HERE. 239. OKAY.
14 A. YES.
15 Q. AND 239, THIS WAS THE DOCUMENT WHERE THEY WENT
16 TO MILITARY BASES, BEACHES AND PLACES LIKE THAT TO FIND OUT
17 WHO WAS SMOKING WHAT, CORRECT?
18 A. THAT'S WHAT THIS SAYS.
19 Q. AND PART OF THE INFORMATION CONTAINED IN 239
20 HAS TO DO WITH WHAT PEOPLE UNDER 18 ARE SMOKING, RIGHT?
21 THAT'S A GOOD PLACE TO START?
22 A. YES. I JUST WANT -- WELL, HE TALKS ABOUT
23 SMOKERS AGE 18 TO 24 --
24 Q. OKAY.
25 A. -- HERE. SMOKERS AGE -- AND HERE, IT'S
26 TALKING, AGAIN, ABOUT SMOKERS 18 TO 24. SO OUR INTERNAL
27 RESEARCH WAS BASED ON 18-TO-24-YEARS-OLDS.
28 Q. LET'S GO ON HERE, THEN.
4412
1 A. AND THERE AGAIN, WHERE YOU WERE RELATING AND
2 ASKING ME ABOUT THESE LOCATIONS THAT WERE VISITED, THE AGE
3 WAS 18 TO 24 AND THEN AGE TO 24. SO THIS WAS OUR INTERNAL
4 TRACKING.
5 I'M SORRY.
6 Q. DON'T BE. WE'LL GET THERE.
7 MR. LEITER: COULD BOTH OF YOU SPEAK UP.
8 THE WITNESS: SORRY. I THOUGHT WE WERE HAVING A
9 PRIVATE CONVERSATION HERE.
10 MR. LEITER: I WANTED TO HEAR, TOO. THANK YOU.
11 Q. BY MR. PIUZE: ISN'T THAT TRUE?
12 YOU REMEMBER WATERGATE, DON'T YOU?

13 A. YES, I DO.
14 Q. YOU REMEMBER THE COVER-UP OF THE COVER-UP?
15 MR. LEITER: I'M GOING TO OBJECT. THIS IS
16 ARGUMENTATIVE. 352.
17 THE COURT: SUSTAINED AT THIS POINT.
18 Q. BY MR. PIUZE: HERE'S THE ONE RIGHT HERE.
19 CURRENT BRANDS, MARLBORO, 18 AND LESS. THAT'S THE ONE I WAS
20 AIMING FOR.
21 DO YOU SEE THAT?
22 A. I DO.
23 Q. AND THERE WERE EVEN PERCENTAGES PUT THERE ON
24 WHAT PERCENTAGE OF PEOPLE 18 AND LESS WERE SMOKING MARLBOROS,
25 RIGHT?
26 A. THERE WAS.
27 Q. WHAT WAS THE PERCENT?
28 A. IT WAS 39 PERCENT.
4413
1 Q. SO OUT OF ALL 18 AND YOUNGER SMOKERS THAT WERE
2 INTERVIEWED, FOUR OUT OF TEN WERE SMOKING YOUR BRAND?
3 A. YES. I JUST NEED TO SEE WHAT THIS WAS.
4 THAT'S WHAT THIS DOCUMENT SAYS.
5 Q. LET'S GO ON BACK HERE JUST FOR A SECOND.
6 WHAT WAS THE NEXT HIGHEST AFTER MARLBORO?
7 A. WINSTON.
8 Q. HOW HIGH?
9 A. NO, WAIT. I'M SORRY. KOOL. KOOL, 24 PERCENT.
10 Q. MARLBORO, 40; KOOL -- EXCUSE ME -- MARLBORO,
11 39; KOOL, 24?
12 A. THAT'S RIGHT.
13 Q. AND HERE'S ANOTHER IN HERE, SEE, THE
14 18-AND-LESS CATEGORY?
15 A. YES.
16 Q. "BRAND SMOKED MOST OFTEN WHEN FIRST STARTED
17 SMOKING."
18 WHAT DID MARLBORO HAVE?
19 A. 35 PERCENT.
20 Q. AND WHAT DOES MARLBORO -- ONE IS NMF AND ONE
21 IS MF.
22 A. ONE IS MENTHOL AND ONE IS NOT A MENTHOL.
23 Q. WHAT DID MARLBORO HAVE?
24 A. 34 -- 35 AND 34.
25 Q. AND I KNOW THAT THERE'S A CLOCK BEHIND ME,
26 WHICH IS GETTING ON. BUT LET'S JUST GO TO THE DOCUMENT THAT
27 I'VE GOT THE BLOWUPS FOR THAT THE JURY CAN LOOK AT HERE.
28 THERE WAS ALSO TRACKING IN THIS PARTICULAR POLL
4414
1 HERE. IT ISN'T A TRACKING.
2 TRACKING IN THIS PARTICULAR DEMOGRAPHIC
3 STUDY -- WHATEVER YOU -- WHAT DO YOU CALL THIS?
4 A. IT IS A DEMOGRAPHIC SURVEY, I WOULD SAY.
5 Q. DID YOUR PERSON FIGURE OUT WHAT PERCENTAGE OF
6 THESE PEOPLE WERE SMOKING MARLBOROS AS COMPARED TO OTHER
7 BRANDS?
8 A. I DON'T KNOW. I HAVEN'T READ THE WHOLE
9 DOCUMENT.
10 Q. OKAY. WELL, YOU KNOW WHAT, FOR MY PURPOSES,
11 LET ME JUST KEEP GOING HERE AND JUST ASK FIVE MORE MINUTES
12 WORTH OF QUESTIONS.
13 DOESN'T THAT LOOK TO YOU LIKE SOMEONE OVER AT
14 PHILIP MORRIS WAS TRYING TO FIGURE OUT WHAT THEIR FUTURE
15 NEEDS ARE, THEIR FUTURE REVENUE, THEIR FUTURE PROFITS, MAYBE
16 FOR ALL WE KNOW, THEIR FUTURE FACTORY LOCATIONS BASED UPON
17 WHAT UNDERAGE SMOKERS WERE DOING WITH YOUR PRODUCT?

18 A. I THINK THAT WOULD CALL FOR ME TO SPECULATE AS
19 TO WHAT THEY WERE TRYING TO EXTRAPOLATE. I HAVEN'T READ THIS
20 FULL REPORT AND REFRESHED MY MEMORY AS TO WHAT IT IS. YOU'RE
21 PULLING OUT TWO PARAGRAPHS, BUT I DON'T KNOW EXACTLY HOW ALL
22 THE INFORMATION WAS USED. BUT I CAN TELL YOU THAT OUR POLICY
23 AS FAR AS MARKETING WAS THAT WE DID NOT MARKET TO KIDS.

24 Q. SO HERE'S 218-2. SAME DOCUMENT. AND THIS ONE,
25 I'VE EXPLODED UP THREE PARTS, AND I'LL READ THEM TO YOU.
26 (READING:)

27
28 "IT IS IMPORTANT TO KNOW AS
4415

1 MUCH AS POSSIBLE ABOUT TEENAGE SMOKING
2 PATTERNS AND ATTITUDES. TODAY'S TEENAGER IS
3 TOMORROW'S POTENTIAL REGULAR CUSTOMER. THE
4 OVERWHELMING MAJORITY OF SMOKERS FIRST BEGIN
5 TO SMOKE WHILE STILL IN THEIR TEENS. THE
6 SMOKING PATTERNS OF TEENAGERS ARE
7 PARTICULARLY IMPORTANT TO PHILIP MORRIS.
8 "FURTHERMORE" --

9
10 YOU KNOW WHAT?
11 I'M GOING TO READ THE STUFF THAT DIDN'T GET
12 BLOWN UP IN THE MIDDLE HERE.

13 (READING:)
14
15 "OF THE ELEVEN PACKAGING OF
16 WHICH THE MEDIAN AGE OF SMOKERS IS UNDERAGE
17 30, SEVEN ARE PHILIP MORRIS PACKAGING, AND
18 THE SHEER INDEX IS HIGHEST IN THE YOUNGEST
19 AGE GROUP FOR ALL MARLBORO AND VIRGINIA SLIMS
20 PACKAGINGS AND FOR BENSON & HEDGES AGAINST
21 LIGHTS AND MENTHOLS."

22
23 AND PICK UP (READING):
24
25 "FURTHERMORE, IT IS DURING THE
26 TEENAGE YEARS THAT THE INITIAL BRAND CHOICE
27 IS MADE. AT LEAST PART OF THE SUCCESS OF
28 MARLBORO RED DURING ITS MOST RAPID GROWTH
4416

1 PERIOD WAS BECAUSE IT BECAME THE BRAND OF
2 CHOICE AMONG TEENAGERS WHO THEN STUCK WITH IT
3 AS THEY GREW OLDER."

4
5 A. IS THAT IN THE SAME DOCUMENT?
6 Q. YES.

7 SO YOUR COMPANY -- SERIOUSLY --
8 PHILIP MORRIS --
9 MR. LEITER: OBJECT TO THE COMMENTARY.

10 THE COURT: SUSTAINED.
11 MR. PIUZE: WITHDRAWN. WITHDRAWN.

12 Q. BY MR. PIUZE: THE BIG COMPANY IN
13 PHILIP MORRIS USA TOBACCO IS BUILT RIGHT OUT OF THE SUCCESS
14 OF MARLBORO RED CIGARETTES, CORRECT?

15 A. MARLBORO CIGARETTES IS CERTAINLY A BIG PART OF
16 THE COMPANY'S SUCCESS. YES, THERE'S NO -- THAT'S CORRECT.

17 Q. MARLBORO RED IS THE DIFFERENCE BETWEEN THE
18 LITTLE COMPANY THAT YOU WENT TO WORK FOR WHICH WAS GROWING
19 AND WHERE IT IS TODAY, RIGHT?

20 A. WELL, WE MAKE A LOT OF BRANDS, BUT MARLBORO
21 CERTAINLY IS OUR BIGGEST BRAND, AND I WOULD SAY OUR MOST
22 SUCCESSFUL BRAND, YES.

23 Q. THE PROFITS FROM MARLBORO RED WENT TO PURCHASE
24 ALL YOUR OTHER COMPANIES, BASICALLY, EXCEPT FOR 7-UP AND THAT
25 ONE OTHER THING THAT YOU MENTIONED?
26 MR. LEITER: OBJECTION. RELEVANCE.
27 THE COURT: OVERRULED.
28 THE WITNESS: WE MADE MONEY FROM A LOT OF BUSINESSES.
4417
1 CERTAINLY, MARLBORO'S CONTRIBUTION HAS BEEN SIGNIFICANT.
2 THERE'S NO ARGUING ABOUT THAT.
3 Q. BY MR. PIUZE: I'M NOT TRYING TO.
4 YOUR COMPANY'S SUCCESS IS BASED ON THE SUCCESS
5 OF MARLBORO RED, AND AT LEAST A PART OF THE SUCCESS OF
6 MARLBORO RED DURING ITS MOST RAPID GROWTH PERIOD WAS BECAUSE
7 IT WAS THE BRAND OF CHOICE AMONG TEENAGERS?
8 MR. LEITER: OBJECTION. ARGUMENTATIVE.
9 Q. BY MR. PIUZE: DO I HAVE THAT RIGHT?
10 A. YOU HAVE WHAT MR. JOHNSON WROTE. I AM NOT
11 GOING TO SPECULATE ABOUT THAT, BECAUSE I BELIEVE THAT THE
12 LION'S SHARE OF OUR BRAND -- OF OUR CONSUMERS WERE ADULT
13 SMOKERS, WHICH IS WHO WE MARKETED THAT BRAND TO. AND TO THIS
14 DAY, OUR SMOKERS ARE MAINLY ADULT SMOKERS.
15 Q. ARE THERE -- OKAY. I'D LIKE TO LEAVE IT AT
16 THAT FOR NOW.
17 YOUR HONOR, IT'S 3 O'CLOCK.
18 THE COURT: THANK YOU, COUNSEL. IT IS 3 O'CLOCK.
19 LADIES AND GENTLEMEN, WE'LL SEE YOU AT 3:15.
20 DON'T DISCUSS THE CASE WITH ANYONE.
21
22 (RECESS.)
23
24 THE COURT: WE'VE GOT OUR JURY PANEL; THE WITNESS;
25 COUNSEL ARE PRESENT AS WELL.
26 PLEASE BE SEATED.
27 YOU UNDERSTAND YOU ARE STILL UNDER OATH.
28 THE WITNESS: YES, SIR.
4418
1 THE COURT: MR. PIUZE.
2 ONE THING. ONE OF OUR JURORS ASKED, WHAT IS
3 352.
4 I MAKE EVIDENTIARY RULINGS. REMEMBER, I TALKED
5 ABOUT RELEVANCE AND HEARSAY AND THINGS LIKE THAT. AND IT
6 TURNS OUT, THE RULINGS I'M MAKING ARE MADE OUT OF THIS CODE
7 BOOK CALLED OUR EVIDENCE CODE. AND THEY HAVE SECTION
8 NUMBERS, 1, 2, 3, 4, 5 AND UP TO 352 AND BEYOND 352.
9 THE LAWYERS KNOW ALL THOSE CODE SECTIONS SO
10 WELL THAT SOMETIMES WE DON'T EVEN USE THE LEGAL WORDS. WE
11 JUST USE THE SECTION NUMBER, AND WE ALL KNOW WHAT WE'RE
12 TALKING ABOUT.
13 FOR YOUR PURPOSES, THE JURY, IS, DON'T TRY TO
14 FIGURE OUT WHY THE OBJECTIONS ARE BEING MADE OR REALLY WHAT
15 THE PURPOSE OF THEM IS. YOUR JOB IS JUST THIS: IF IT'S BEEN
16 EXCLUDED FROM EVIDENCE AND THEY HAVEN'T BEEN ABLE TO ANSWER,
17 AND IF I SAY SUSTAINED, JUST IGNORE THE ANSWER. YOUR JOB IS
18 TO WORK WITH THE EVIDENCE AND NOT TO WORRY ABOUT WHAT THE
19 OBJECTIONS ARE OR THE REASONS FOR THE OBJECTIONS.
20 ALL RIGHT. THAT HAVING BEEN SAID, MR. PIUZE,
21 YOU MAY PROCEED.
22 MR. PIUZE: THANKS.
23 Q. LET ME SHOW YOU ANOTHER PHILIP MORRIS DOCUMENT
24 THAT'S IN EVIDENCE. THIS IS 229.00. IT'S FROM
25 SEPTEMBER 17, 1981. AND AGAIN, THERE'S A CLIP -- ONE OR TWO
26 CLIPS, YELLOW HIGHLIGHTER THAT DIRECTS YOU WHERE I'M GOING
27 AND WHAT I'M GOING TO ASK YOU ABOUT.

28 I'M GOING TO SHOW THE JURY THE SAME ONE PAGE.

4419

1 THIS COMES FROM THE SECOND PAGE IN THE MIDDLE, AND THEN AT
2 THE BOTTOM GOING OVER TO PAGE 3.

3 THIS IS MYRON JOHNSON AGAIN, RIGHT?

4 A. YES, THAT'S CORRECT.

5 Q. IN 1981?

6 A. CORRECT.

7 Q. WHO'S HARRY DANIEL?

8 A. I DON'T KNOW.

9 Q. HAVE YOU EVER HEARD THIS TOPIC DISCUSSED OVER
10 AT PHILIP MORRIS?

11 A. EXCISE TAXES?

12 Q. YES.

13 A. YES.

14 Q. EXCISE TAXES INCREASE THE PRICE OF YOUR
15 PRODUCT?

16 A. THAT'S CORRECT.

17 Q. HAVE YOU EVER HEARD THE EXCISE TAXES DISCUSSED
18 SOLELY AS THOSE TAXES RELATE TO TEENAGE SMOKING?

19 A. I HAVE.

20 Q. WHEN?

21 A. OVER THE YEARS. EVEN TO THIS DAY.

22 Q. WHEN IS TO THIS DAY?

23 A. I MEAN, CURRENTLY, IT IS STILL A DISCUSSION IN
24 SOME GROUPS THAT THE HIGHER THE PRICE OF CIGARETTES, THAT
25 THAT IS AN EFFECTIVE WAY TO REDUCE THE INCIDENTS OF SMOKING,
26 AND SOME GROUPS BELIEVE, UNDERAGE SMOKING.

27 Q. WHAT GROUPS?

28 A. CENTER FOR TOBACCO-FREE KIDS BELIEVE IT. I

4420

1 BELIEVE SOME CONGRESSMEN BELIEVE IT. I BELIEVE SOME OF THE
2 OTHER ANTI-SMOKING GROUPS AND GROUPS THAT SUPPORT YOUTH
3 SMOKING PREVENTION BELIEVE IT.

4 Q. TWENTY YEARS AGO, PHILIP MORRIS WAS DOING
5 INTERNAL STUDIES TO SEE IF AN EXCISE TAX WOULD COST THEM
6 TEENAGE CUSTOMERS?

7 MR. LEITER: OBJECTION TO THE CHARACTERIZATION OF THE
8 DOCUMENT.

9 Q. BY MR. PIUZE: ISN'T THAT RIGHT?

10 A. WELL, THE STUDY WAS ACTUALLY -- FROM WHAT I'M
11 READING HERE, THE STUDY WAS NOT DONE BY PHILIP MORRIS. IT
12 WAS DONE BY THE NATIONAL BUREAU OF ECONOMIC RESEARCH. AND
13 THE BEST THAT -- BECAUSE I HAVE NOT SEEN THIS DOCUMENT
14 BEFORE. THE BEST THAT I CAN SEE HERE AS I READ IT, IT WAS AN
15 INTERPRETATION OF A STUDY THAT WAS DONE BY SOMEBODY ELSE.

16 Q. THAT'S OKAY. BUT IT WAS PHILIP MORRIS'
17 DEMOGRAPHER'S INTERPRETATION OF WHAT IT WAS GOING TO DO TO
18 THE PHILIP MORRIS' TEENAGE SMOKING BUSINESS, RIGHT?

19 A. WELL, IT WAS THE GOVERNMENT -- THE GOVERNMENT
20 DID THAT RESEARCH.

21 Q. RIGHT.

22 A. AND WHAT I SEE HERE IS THAT MR. JOHNSON WAS
23 REPORTING THE RESULTS OF THAT GOVERNMENT STUDY.

24 Q. OKAY. MR. JOHNSON WAS REPORTING WHAT WOULD
25 HAPPEN TO PHILIP MORRIS' TEENAGE SMOKING CUSTOMERS?

26 I'M GOING TO GET TO WHERE IT SAYS PHILIP MORRIS
27 SPECIFICALLY.

28 A. THE BEST AS I CAN READ THIS, IT IS NOT DIRECTLY

4421

1 TIED TO PHILIP MORRIS, BUT JUST NUMBERS IN GENERAL THAT HAVE
2 BEEN LIFTED, AND I HAVEN'T, OBVIOUSLY, HAD THE CHANCE TO READ
3 IT THOROUGHLY. BUT I DON'T SEE PHILIP MORRIS MENTIONED HERE.

4 I THINK IT'S JUST A REPORT ON THE STUDY.
5 Q. WHY DON'T I SAVE YOU.
6 WHETHER PHILIP MORRIS IS MENTIONED OR NOT --
7 AND I DON'T KNOW ONE WAY OR ANOTHER -- THIS IS AN INTERNAL
8 DOCUMENT FROM PHILIP MORRIS WHERE PEOPLE INSIDE OF THE
9 COMPANY ARE DISCUSSING WHAT'S GOING TO HAPPEN TO THEIR
10 TEENAGE SMOKING BUSINESS IF THE EXCISE TAX GOES UP, RIGHT?
11 MR. LEITER: OBJECTION. CHARACTERIZATION AND
12 ARGUMENTATIVE.
13 THE COURT: IS THAT YOUR UNDERSTANDING OF WHAT HE'S
14 SAYING?
15 THE WITNESS: NO. IT'S REALLY MY UNDERSTANDING OF
16 WHAT I SEE; THAT THIS IS A DOCUMENT THAT REPORTS THE FINDINGS
17 OF THE NATIONAL BUREAU OF ECONOMIC RESEARCH ON THE EFFECT OF
18 GOVERNMENT REGULATION ON TEENAGE SMOKING, BUT IT IS STRICTLY
19 A REPORT BASED ON THE REPORT, AND IT DOESN'T MENTION
20 PHILIP MORRIS AT ALL.
21 Q. BY MR. PIUZE: I THOUGHT PART OF MY QUESTION
22 WAS, I DON'T -- I'M NOT SAYING IT DOES OR DOESN'T MENTION
23 PHILIP MORRIS.
24 BUT IT'S AN INTERNAL COMPANY DOCUMENT
25 DISCUSSING THOSE VARIOUS ISSUES YOU JUST STATED, CORRECT?
26 A. IT IS AN INTERNAL DOCUMENT THAT IS REPORTING
27 WHAT WAS IN THIS REPORT, YES.
28 Q. WHERE DO TEENAGERS, INCLUDING
4422
1 12-TO-14-YEAR-OLDS, GET THEIR CIGARETTES?
2 A. YOU KNOW, YOU'D HAVE TO SPEAK TO AN EXPERT IN
3 THAT REGARD. BUT MY UNDERSTANDING IS THAT ABOUT 20 TO 30
4 PERCENT COME FROM PURCHASES FROM RETAILERS THAT DO NOT CHECK
5 I.D. AND ABOUT 70 PERCENT, BASED ON THE NUMBERS THAT I'M
6 AWARE OF TODAY, COME FROM OLDER SIBLINGS, FRIENDS, EVEN FROM
7 THE HOME, FROM A PARENT WHO LEAVES CIGARETTES UNATTENDED. SO
8 OTHER THAN FROM RETAIL.
9 Q. GIVE US YOUR VIEW, PLEASE, ON WHETHER OR NOT
10 THE BRAND CHOSEN EARLY ON IS THE BRAND LIKELY TO BE STUCK
11 WITH BY A SMOKER?
12 MR. LEITER: OBJECTION. FOUNDATION OF HER VIEW.
13 THE COURT: SUSTAINED.
14 Q. BY MR. PIUZE: ARE YOU AWARE OF PHILIP MORRIS'
15 VIEW ON THAT?
16 A. I DON'T KNOW THAT WE HAVE A VIEW ON THAT. IT'S
17 HARD TO PROJECT, BECAUSE THERE IS A SUBSTANTIAL AMOUNT OF
18 SWITCHING THAT GOES ON.
19 Q. WE'VE HEARD NUMBERS HERE FROM WITNESSES, AND
20 I'LL TELL YOU WITNESSES ON MY SIDE OF THE CASE -- I'M NOT
21 PUTTING THIS ON A PHILIP MORRIS WITNESS -- THAT SAY THAT IN
22 ANY GIVEN YEAR, ONLY 10 PERCENT OF PEOPLE SWITCH BRANDS.
23 DO YOU HAVE ANY -- BASED ON WHAT PHILIP MORRIS
24 HAS DONE, DO YOU WANT TO SAY THAT SOUNDS ABOUT RIGHT OR IT'S
25 ALL WET OR NEITHER?
26 A. I REALLY CAN'T ARGUE THE POINT ONE WAY OR THE
27 OTHER BECAUSE I HAVEN'T LOOKED AT ANY OF THOSE STUDIES IN A
28 VERY LONG TIME. I REALLY DON'T KNOW THE NUMBERS. I WOULD
4423
1 ONLY BE CONJECTURING.
2 Q. SO YOUNG KIDS --
3 BY THE WAY, ONCE UPON A TIME, CIGARETTES WERE
4 SOLD INDISCRIMINATELY IN VENDING MACHINES, WEREN'T THEY?
5 MR. LEITER: I'M GOING TO OBJECT TO THE ARGUMENTATIVE
6 INDISCRIMINATELY.
7 MR. PIUZE: I'LL WITHDRAW THE QUESTION.
8 Q. ONCE UPON A TIME, CIGARETTES WERE SOLD IN

9 VENDING MACHINES, RIGHT?
10 A. CIGARETTES WERE SOLD IN VENDING MACHINES.
11 CIGARETTES ARE STILL SOLD IN VENDING MACHINES, ALTHOUGH FAR
12 FEWER.
13 Q. SO HOW DOES A VENDING MACHINE CARD?
14 A. WELL, THAT'S WHY PHILIP MORRIS FOR SOME TIME
15 HAS BEEN OPPOSED TO CIGARETTES IN VENDING MACHINES WHERE
16 THERE ISN'T SOME WAY TO EITHER LOCK OUT -- WHAT WE CALL A
17 LOCKOUT DEVICE WHERE YOU WOULD HAVE TO GET A SPECIAL TOKEN
18 FROM A RETAILER WHO WOULD CHECK I.D. OR IN AN ATTENDED AREA.
19 WE'RE OPPOSED TO VENDING THAT IS UNATTENDED.
20 Q. AND HOW LONG HAS THAT BEEN YOUR POSITION?
21 A. WE TOOK A PUBLIC STANCE ON IT IN 1995 AND HAVE
22 BEEN ENCOURAGING THAT VENDING MACHINES REALLY BE LIMITED TO
23 AREAS WITH LARGE ADULT TRAFFIC FOR SOME TIME.
24 Q. BY THE WAY, BY 1995 -- EXCUSE ME FOR A SECOND.
25 YOUR HONOR, I JUST WANT TO CONFER HERE FOR
26 ABOUT 15 SECONDS.
27 BY 1995, PHILIP MORRIS HAD BEEN SUED BY VARIOUS
28 STATES' ATTORNEYS GENERAL, AND ONE OF THE ISSUES OF THE
4424
1 LAWSUIT HAD TO DO WITH TEEN SMOKING?
2 A. THAT'S CORRECT.
3 Q. UP UNTIL 1995, WHAT, IF ANYTHING, WAS
4 PHILIP MORRIS' POSITION REGARDING VENDING MACHINES?
5 A. PHILIP MORRIS' POSITION ON VENDING MACHINES WAS
6 THAT THEY REALLY SHOULD BE LIMITED TO PLACEMENT THAT HAD
7 HEAVY ADULT TRAFFIC, LIKE BARS AND RESTAURANTS. EVEN
8 SUPERMARKETS AND PLACES WHERE THERE WAS ADULT TRAFFIC.
9 Q. SO WE'VE HEARD SOME TESTIMONY IN THIS CASE
10 ABOUT A RESTAURANT CALLED THE INTERNATIONAL HOUSE OF PANCAKES
11 OVER ON HOLLYWOOD BOULEVARD NEAR HOLLYWOOD HIGH SCHOOL.
12 IS THAT THE KIND OF PLACE THAT YOU'RE TALKING
13 ABOUT OR RESTAURANT?
14 A. I'M UNAWARE OF THAT TESTIMONY BECAUSE I WASN'T
15 HERE. SO I DON'T KNOW ABOUT THE INTERNATIONAL HOUSE OF
16 PANCAKES ON HOLLYWOOD BOULEVARD.
17 Q. OKAY. WELL, BEFORE 1995 AND BEFORE THE STATES'
18 ATTORNEYS GENERAL HAD GOT INVOLVED IN A LAWSUIT WITH
19 PHILIP MORRIS AND TEEN SMOKING WAS ONE OF THE ISSUES OF THE
20 LAWSUIT, YOU'RE SAYING, WELL, WE AT PHILIP MORRIS, ONE OF THE
21 THINGS WE WANTED WAS TO HAVE VENDING MACHINES IN RESTAURANTS,
22 RIGHT?
23 A. NO, I DON'T THINK I SAID THAT. WELL, I SAID
24 BARS AND RESTAURANTS. BUT I WAS TALKING ABOUT MORE PLACES
25 THAT WERE FOCUSED ON ADULT CONSUMERS.
26 Q. OKAY. WELL, BESIDES BARS, WHAT FOCUSES ON
27 ADULT CONSUMERS?
28 A. WELL, OFFICE BUILDINGS WHERE MAINLY YOU HAVE
4425
1 ADULTS WORKING THAT USED TO HAVE VENDING MACHINES. SOME
2 SUPERMARKETS THAT USED VENDING TO SELL THEIR PRODUCT. NOT
3 JUST INDISCRIMINATELY PLACED, BUT PLACES THAT CATERED MORE TO
4 ADULT TRAFFIC.
5 Q. YOU MENTIONED IN ONE OF YOUR ANSWERS WITHIN THE
6 LAST COUPLE OF MINUTES THE CENTER FOR SOMETHING -- SMOKE-FREE
7 KIDS OR SOMETHING LIKE THAT. WHAT'S IT CALLED?
8 A. TOBACCO-FREE KIDS.
9 Q. THAT ORGANIZATION HAS BEEN AND REMAINS A MAJOR
10 CRITIC OF YOUR CHILD PREVENTION SMOKING EFFORTS?
11 A. YES, IT DOES. ACTUALLY, IT'S COALITION FOR
12 TOBACCO-FREE KIDS. SORRY.
13 Q. THEY DON'T BELIEVE YOUR EFFORTS AT ALL, DO

14 THEY?
15 A. NO, THEY DO NOT.
16 Q. THEY PUBLICLY STATE THEY WOULDN'T TRUST YOU AS
17 FAR AS THEY COULD THROW YOU?
18 A. THAT IS WHAT THEY SAY.
19 Q. REMEMBER, YOU WERE TALKING ABOUT POINT OF
20 SALES -- WHEN YOU WERE TALKING ABOUT SOME OF YOUR EXPERIENCE
21 IN MARKETING, YOU WERE TALKING ABOUT POINT OF SALES?
22 A. YES, I REMEMBER THAT.
23 Q. DEFINE THAT BRIEFLY, PLEASE.
24 A. POINT OF SALE IS DEFINED AS MATERIALS YOU WOULD
25 FIND IN A RETAIL OUTLET. I THINK I ALLUDED TO A 7-ELEVEN OR
26 A CONVENIENCE STORE. IT COULD BE SOMETHING THAT HOLDS
27 PRODUCT, PRODUCT DISPLAY. OR IT CAN BE A SIGN IN ONE OF
28 THOSE STORES. BUT IT'S A SIGNAGE THAT YOU WOULD TYPICALLY
4426
1 FIND IN A RETAIL OUTLET.
2 Q. WE'VE SEEN WITH THE LAST WITNESS BEFORE YOU,
3 PROFESSOR COBBS HOFFMAN, A RECENT NEWSPAPER ARTICLE --
4 MEANING, WITHIN THE LAST COUPLE OF WEEKS -- FROM THE L.A.
5 TIMES HERE ABOUT A STUDY THAT WAS DONE UP IN THE NEXT COUNTY
6 UP, VENTURA COUNTY, AND THE IDEA WAS THE (READING):
7
8 "CIGARETTE MANUFACTURERS HAD
9 SHIFTED THEIR ADVERTISING FOCUS TO LOCAL
10 MARKETS AND GAS STATIONS FOLLOWING THE 1998
11 BAN ON BILLBOARD SPOTS AND OTHER SELLING
12 TECHNIQUES DESIGNED TO DRAW IN CHILDREN."
13
14 NOW, CAN YOU TELL US WHETHER YOU THINK THAT'S
15 CORRECT?
16 A. I CAN TELL YOU THAT IT'S NOT CORRECT, AT LEAST
17 AS FAR AS PHILIP MORRIS IS CONCERNED.
18 OUR SPENDING AT POINT OF SALE, ALONG WITH OUR
19 ADVERTISING SPENDING, HAS BEEN REDUCED ABOUT 20 PERCENT ON
20 SIGNAGE IN STORES. THERE HAS BEEN SPENDING THAT HAS BEEN
21 LUMPED TOGETHER WITH ADVERTISING, WHICH IS FOR MERCHANDISING
22 ARRANGEMENTS, WHICH I THINK I DISCUSSED YESTERDAY, AS WELL AS
23 PRICE REDUCTION PROMOTIONS AT RETAIL. BUT AS FAR AS SIGNAGE
24 AND ADVERTISING AT POINT OF SALE, THERE'S BEEN APPROXIMATELY
25 A 20 PERCENT REDUCTION.
26 Q. AND ALSO SHOWN AND READ TO THE JURY WITH THE
27 LAST WITNESS, PROFESSOR COBBS HOFFMAN, WAS AN ARTICLE OUT OF
28 THE SAN DIEGO UNION TRIBUNE -- SORRY -- SAYING --
4427
1 DO YOU KNOW WHO THE AMERICAN LUNG ASSOCIATION
2 IS?
3 A. YES.
4 Q. ANOTHER ONE OF YOUR CRITICS?
5 A. YES.
6 Q. (READING:)
7
8 "'WE KNOW THAT THE TOBACCO
9 INDUSTRY STRATEGICALLY PLACES THEIR PRODUCTS
10 NEXT TO PRODUCTS THAT APPEAL TO CHILDREN,
11 PARTICULARLY IN STORES NEAR SCHOOLS,' SAID
12 DEBORAH KELLEY, AMERICAN LUNG ASSOCIATION
13 VICE-PRESIDENT OF GOVERNMENT RELATIONS."
14
15 SO IT SOUNDS LIKE YOUR TITLE A LITTLE BIT.
16 (READING:)
17
18 "THAT'S WHY WE FEEL THAT THERE

19 HAS TO BE SOME VISUAL SEPARATION TO KIND OF
20 SEVER THE CONNECTION BETWEEN THE THREE
21 MUSKETEERS AND THE MARLBORO MAN."

22

23 SO YOU'RE HERE TO TELL US PHILIP MORRIS'
24 VIEWPOINT ON ITSELF.

25 WHAT DO YOU THINK ABOUT THE CONNECTION BETWEEN
26 THE THREE MUSKETEERS AND THE MARLBORO MAN?

27 A. WELL, AS I TOLD YOU, WE ARE ADVOCATES OF
28 NON-SELF-SERVICE MERCHANDISING, AND NON-SELF-SERVICE

4428

1 MERCHANDISING, WHICH IS WHAT WE PAY THE HIGHEST LEVEL OF
2 MERCHANDISING ALLOWANCE FOR, WOULD REMOVE TOBACCO FROM THE
3 COUNTER TOTALLY, AND THAT'S WHAT WE'RE ADVOCATING.
4 AND IN FACT, I BELIEVE WE'RE NOW AT ABOUT CLOSE
5 TO 90 PERCENT OF OUR DIRECT CUSTOMERS THAT WE GO IN AND SET
6 UP DISPLAYS WITHIN THE STORE HAVE ACCEPTED THE
7 NON-SELF-SERVICE PROVISION.

8 Q. THIS DOESN'T SAY THERE'S TOBACCO ON THE
9 COUNTER. THIS SIMPLY SAYS THAT WHEN A KID REACHES FOR A
10 THREE MUSKETEERS, THAT THERE'S A PACK OF CIGARETTES THERE,
11 BUT THAT THERE'S AN AD THERE, THREE MUSKETEERS, MARLBORO,
12 THREE MUSKETEERS, MARLBORO.

13 A. THAT IS NOT OUR POLICY. OUR POLICY IS TO LIMIT
14 TOBACCO ADVERTISING TO THE TOBACCO MERCHANDISING AREA, AND WE
15 ARE ADVOCATING NON-SELF-SERVICE BEHIND THE COUNTER, WHICH IS
16 WHERE WE WANT OUR SIGNAGE PLACED. THAT IS NOT OUR POLICY AT
17 ALL.

18 Q. AND TO FINISH THIS UP, AND THEN I'M ON TO
19 SOMETHING ELSE FROM THE SAME ARTICLE.

20 ONE OF THE STUDIES WAS BY THE MASSACHUSETTS
21 DEPARTMENT OF PUBLIC HEALTH -- AND I SAY THAT BECAUSE YOU
22 MENTIONED THAT IN YOUR DIRECT EXAMINATION -- THAT STATE --
23 AND ANOTHER WAS DONE BY THE AMERICAN LEGACY FOUNDATION -- AND
24 IT GOES ON FROM THERE DESCRIBING WHAT THE LEGACY FOUNDATION
25 IS.

26 NOW, DIDN'T YOU TELL THE JURY SOMETHING ABOUT
27 YOU GOING UP TO MASSACHUSETTS AND COOPERATING WITH THE
28 OFFICIALS THERE?

4429

1 A. NO. WHAT I SAID WAS THAT CAROLYN LEVY AND I
2 WENT UP TO MASSACHUSETTS TO MEET WITH DR. CONNELLY WHEN WE
3 WERE STARTING OUR YOUTH SMOKING PREVENTION DEPARTMENT TO TALK
4 TO DR. CONNELLY ABOUT SOME OF THE EFFORTS THAT THEY HAD MADE
5 IN MASSACHUSETTS, TO TALK TO HIM AND SHARE OUR RESEARCH WITH
6 HIM AND TO HAVE A DIALOGUE WITH HIM ABOUT SOME OF HIS
7 INSIGHTS.

8 Q. WHEN?

9 A. WELL, WE STARTED THE YOUTH SMOKING PREVENTION
10 DEPARTMENT IN 1998, AND I BELIEVE THAT WE VISITED WITH
11 DR. CONNELLY EITHER IN LATE '98 OR EARLY '99.

12 Q. WELL, IN THE YEAR 2000, THE MASSACHUSETTS
13 DEPARTMENT OF PUBLIC HEALTH WAS ACCUSING YOU OF BAD THINGS,
14 WASN'T IT, AS FAR AS TEEN SMOKING WAS CONCERNED AND
15 PROMOTIONS?

16 A. YOU'D HAVE TO TELL ME SPECIFICALLY WHAT YOU'RE
17 REFERRING TO.

18 Q. (READING):

19

20 "CIGARETTE MAKERS HAVE
21 INCREASED ADVERTISING IN MAGAZINES WITH LARGE
22 TEEN READERSHIPS SINCE 1998 WHEN THEY AGREED
23 IN A COURT SETTLEMENT NOT TO TARGET YOUTHS IN

24 THEIR ADS, ACCORDING TO TWO STUDIES RELEASED
25 YESTERDAY. CIGARETTE MAKERS SAID THE STUDIES
26 WERE MISLEADING. ONE OF THE STUDIES WAS BY
27 THE MASSACHUSETTS DEPARTMENT OF PUBLIC
28 HEALTH. THE OTHER WAS BY THE AMERICAN LEGACY
4430

1 FOUNDATION."

2

3 THAT'S WHAT I'M REFERRING TO.

4 A. OKAY. I'M AWARE OF THAT, AND INTERESTING THAT
5 YOU SHOULD BRING THAT UP. BECAUSE AFTER THAT STUDY APPEARED,
6 AND PHILIP MORRIS HAD VOLUNTARILY REMOVED ITS ADS FROM BACK
7 COVERS OF ALL MAGAZINES BEFORE THAT STUDY WAS RELEASED, AND
8 THEN SUBSEQUENTLY, REMOVED ITS ADS FROM SOME 50 MAGAZINES
9 BASED ON AN FDA METHOD FOR EVALUATING MAGAZINES, DR. CONNELLY
10 CALLED ME PERSONALLY AND SAID, I JUST WANT TO SAY, THANK YOU
11 AND CONGRATULATIONS, I'M ALWAYS THERE TO CRITICIZE WHEN I
12 DON'T THINK YOU'RE DOING THE RIGHT THING, AND I THINK WHAT
13 YOU'VE JUST DONE IS TERRIFIC.

14 Q. HOW HAS YOUR ADVERTISING BUDGET GONE OVER THE
15 COURSE OF THE LAST THREE YEARS, LET'S SAY, SINCE YOU'VE PUT
16 ON A MORE FRIENDLY CORPORATE FACE?

17 A. WELL --

18 MR. LEITER: OBJECT. NEVER MIND.

19 THE WITNESS: IN THE LAST THREE YEARS, AS I INDICATED,
20 OUR ADVERTISING BUDGET HAS DECLINED BY ABOUT 20 PERCENT.

21 Q. BY MR. PIUZE: TO WHAT?

22 A. I DON'T KNOW THE EXACT NUMBER. I'D HAVE TO --

23 I'D HAVE TO CHECK THAT FOR YOU. BUT WE'RE ADVERTISING FAR
24 LESS. AS I SAY, WE'RE OFF ALL BACK COVERS OF ALL MAGAZINES,
25 AND WE HAVE DRAMATICALLY CUT THE NUMBER OF MAGAZINES THAT WE
26 ADVERTISE IN AT ALL.

27 Q. WERE YOU JUST ON MAGAZINE ADS NOW OR ON TOTAL
28 ADVERTISING BUDGET?

4431

1 A. WELL, WHAT YOU WERE CITING THERE, I THOUGHT,
2 WAS MAGAZINE ADVERTISING. IF YOU'RE TALKING ABOUT POINT OF
3 SALE --

4 Q. TOTAL. WHAT I'M SAYING -- I'VE GOT MY EYE ON
5 THE CLOCK. I KNOW I TOLD YOU I WAS GOING TO TRY TO FINISH,
6 AND I DON'T THINK I'M GOING TO DO IT, BUT I'M GOING TO CUT
7 YOU OFF IN AN ATTEMPT TO HELP GET THERE.

8 A. ALL RIGHT.

9 Q. SINCE YOUR SETTLEMENT HERE THAT THIS IS TALKING
10 ABOUT, YOU'VE INCREASED YOUR ADVERTISING BUDGET A LOT?

11 A. THAT'S NOT CORRECT. WE HAVE NOT. WE HAVE
12 REDUCED OUR ADVERTISING BUDGET.

13 WHAT I EXPLAINED TO YOU WAS THAT IN TOTAL
14 SPENDING, WE ARE SPENDING MORE MONEY ON MERCHANDISING
15 ALLOWANCES AND PRICE-OFF PROMOTIONS AT POINT OF SALE, BUT
16 ADVERTISING BOTH AT POINT OF SALE AND IN MAGAZINES HAS
17 DECLINED BY SOME 20 PERCENT IN THAT TIME.

18 Q. TELL YOU WHAT. THIS IS YOUR AREA, NOT MINE.

19 BUT WHETHER YOU WANT TO SPLIT IT INTO MERCHANDISING AND
20 PROMOTIONS OR POINT OF SALE ADVERTISING, YOU'RE SPENDING MORE
21 MONEY ON MERCHANDISING, SLASH, ADVERTISING NOW SIGNIFICANTLY
22 OVER THE LAST SEVERAL YEARS, DIDN'T YOU?

23 A. WELL, I DON'T THINK IT'S SPLITTING HAIRS TO
24 DISTINGUISH BETWEEN ADVERTISING AND WHAT WE PAY TO A
25 RETAILER, WHICH IS NOT ADVERTISING FOR MERCHANDISING
26 ALLOWANCES. I THINK THERE'S A BIG DIFFERENCE THERE.

27 Q. HASN'T THE BUDGET -- HASN'T THE AMOUNT SPENT ON
28 PROMOTIONS AND ADVERTISING AND MERCHANDISE BY THE INDUSTRY

4432

1 GONE UP SEVERAL BILLION DOLLARS IN THE LAST COUPLE OF YEARS?

2 A. SEVERAL BILLION DOLLARS?

3 Q. YEAH.

4 A. I DON'T THINK SO. AS I SAID, THERE IS A BIG
5 DIFFERENCE BETWEEN ADVERTISING AND MERCHANDISING ALLOWANCES
6 AND PRICE-OFF PROMOTIONS. THE PRICE OF A PACK OF CIGARETTES
7 HAS GONE UP DRAMATICALLY IN THE PAST THREE YEARS. ALMOST A
8 DOLLAR A PACK. AND WE DO RUN MORE PRICE PROMOTIONS THAN WE
9 DID BEFORE.

10 BUT AS FAR AS ADVERTISING IS CONCERNED, THE
11 AMOUNT HAS BEEN REDUCED SIGNIFICANTLY.

12 Q. OKAY. IF I LOOK IN YOUR COMPANY'S ANNUAL
13 REPORT, IS IT GOING TO TELL ME ABOUT HOW MUCH MONEY YOU SPEND
14 ON PROMOTIONS AND ADVERTISING AND MERCHANDISING?

15 A. WE REPORT IT TO THE GOVERNMENT. I DON'T THINK
16 YOU'LL FIND IT IN THE ANNUAL REPORT.

17 Q. SO I CAN LOOK IN FEDERAL UNITED STATES
18 GOVERNMENT REPORTS TO FIND OUT, RIGHT?

19 A. THAT'S RIGHT.

20 Q. OKAY. WHICH IS A SEGUE TO THE FOLLOWING.

21 YOU TALKED A LOT YESTERDAY ON DIRECT
22 EXAMINATION TO THE JURY ABOUT PHILIP MORRIS' EFFORTS IN
23 REGARD TO THIS SENSITIVE ISSUE OF YOUTH SMOKING, DIDN'T YOU?

24 A. YES, I DID.

25 Q. YOU SORT OF HAD A LITTLE BUILT-IN INCENTIVE TO
26 BE DOING THAT, DIDN'T YOU?

27 A. YOU'LL HAVE TO -- YOU'LL HAVE TO BE CLEARER TO
28 ME AS TO WHAT YOU MEAN BY THAT. I DON'T KNOW WHAT YOU MEAN

4433

1 BY "BUILT-IN INCENTIVE."

2 Q. YOU HAD THE ATTORNEYS GENERAL OF STATES OF THE
3 UNITED STATES BREATHING DOWN YOUR NECK -- NOT PERSONALLY,
4 CORPORATELY -- AND SUING YOU AND TRYING TO GET YOU TO STOP
5 MARKETING TO TEENAGERS, RIGHT?

6 MR. LEITER: I'M GOING TO OBJECT TO THE
7 CHARACTERIZATION.

8 THE COURT: WELL, IF SHE DISAGREES WITH IT, SHE CAN
9 DISAGREE.

10 THE WITNESS: WE HAVE -- I THINK WHAT YOU'RE REFERRING
11 TO -- WE HAVE SETTLED LAWSUITS WITH THE STATES' ATTORNEYS
12 GENERAL, AND AS A RESULT OF THAT, THERE CERTAINLY ARE SOME
13 STIPULATIONS ABOUT WHAT WE CAN AND CAN'T DO.
14 AND I THINK I TALKED EARLIER TODAY ABOUT OUR
15 MISSION AND VALUES, OUR COMMITMENT TO NOT ONLY OBEY THE RULES
16 AND REGULATIONS THAT GUIDE OUR INDUSTRY, BUT TO EXCEED THEM.
17 AND SO WHAT I WAS TALKING ABOUT YESTERDAY HAD NOTHING TO DO
18 WITH THE ATTORNEYS GENERAL.

19 OVER AND ABOVE ANY COMMITMENTS THAT WE MADE TO
20 THE ATTORNEYS GENERAL AS A RESULT OF THOSE SETTLEMENTS,
21 PHILIP MORRIS HAS UNDERTAKEN SOME VOLUNTARY ACTIONS, AND
22 EVERYTHING THAT I DISCUSSED IN MY TESTIMONY PRIOR TO JUST NOW
23 WAS REFERRING TO THOSE VOLUNTARY ACTIONS.

24 Q. OH, I KNOW. BUT THE POINT I'M TRYING TO MAKE
25 HERE IS: BEFORE YOU TOOK ANY VOLUNTARY ACTIONS, YOU HAD THE
26 ATTORNEYS GENERAL GOING AFTER YOU ON THESE VERY ISSUES,
27 RIGHT?

28 A. WELL, I CAN TELL YOU THAT BEFORE WE HAD A

4434

1 SETTLEMENT WITH THE ATTORNEYS GENERAL, WE HAD ESTABLISHED OUR
2 YOUTH SMOKING PREVENTION DEPARTMENT. WE HAD ACCESSED OUR
3 ACTIONS AGAINST THE ACCESS INITIATIVE. SO WE TOOK MANY OF
4 THOSE ACTIONS PRIOR TO THE ATTORNEYS GENERAL. WE'VE TAKEN

5 SUBSEQUENT ACTIONS SINCE THEN THAT GO BEYOND THE TERMS OF THE
6 AGREEMENT.

7 Q. WHAT DO YOU MEAN, "PRIOR TO THE ATTORNEYS
8 GENERAL"?

9 WHAT DID YOU MEAN BY THAT?

10 A. I THINK YOU WERE REFERRING TO -- YOU SAID THAT
11 WE HAD THE ATTORNEYS GENERAL LOOKING OVER OUR SHOULDER,
12 BREATHING DOWN OUR NECKS.
13 AND WHAT I WAS SAYING WAS, THAT PRIOR TO THAT
14 AGREEMENT WITH THE ATTORNEYS GENERAL, WE HAD TAKEN SOME
15 ACTIONS, AND WE HAVE TAKEN OTHER ACTIONS SINCE THE AGREEMENT
16 WITH THE ATTORNEYS GENERAL THAT ARE VOLUNTARY AND GO BEYOND
17 ANY AGREEMENT WITH THE ATTORNEYS GENERAL.

18 Q. OKAY. SO LET'S GET THIS TIMING STRAIGHT SO
19 WE'RE ALL SQUARE ON IT.
20 THE FIRST THING THAT HAPPENED IS THE ATTORNEYS
21 GENERAL SUED YOU IN 1994. YOU HADN'T UNDERTAKEN ANY
22 VOLUNTARY ACTION ON ANY OF THIS STUFF. THE LADY WHO WE'RE
23 GOING TO TALK ABOUT AGAIN, DR. LEVY, WHO HAD DONE THE
24 ADDICTION STUDIES, AND WHO IS NOW IN CHARGE OF YOUTH SMOKING,
25 SHE HADN'T BEEN PUT IN CHARGE OF YOUTH SMOKING. YOU DIDN'T
26 HAVE A DEPARTMENT ON YOUTH SMOKING.
27 NONE OF THAT STUFF EXISTED UNTIL AFTER THE
28 ATTORNEYS GENERAL CAME AFTER YOU, RIGHT?

4435

1 A. WE DID NOT HAVE A FREESTANDING DEPARTMENT. I
2 THINK I DESCRIBED THAT YESTERDAY IN MY TESTIMONY; THAT OUR
3 INITIATIVES VIS-A-VIS YOUTH SMOKING, ACCESS PREVENTION,
4 "WE CARD" AND ALL OF THE OTHER THINGS THAT COME UNDER THE
5 AUSPICES OF CORPORATE AFFAIRS PRIOR TO THERE BEING AN
6 ESTABLISHMENT OF A YOUTH SMOKING PREVENTION DEPARTMENT.
7 WHEN MIKE SZYMANCZYK TOOK OVER AS PRESIDENT AND
8 CEO, HE WANTED TO DO MORE IN THE AREA OF YOUTH SMOKING, AND
9 SO HE ASKED ME TO FORM A TASK FORCE TO LOOK AT HOW WE COULD
10 MORE PROACTIVELY ADDRESS THE ISSUE, AND I THEN RECOMMENDED
11 THE YOUTH SMOKING PREVENTION DEPARTMENT IN 1998. BUT THAT
12 DOESN'T MEAN WE DIDN'T DO ANYTHING PRIOR TO THAT.

13 Q. JUST TO PUT NUMBERS ON IT, THOUGH.
14 1994 IS WHEN THEY CAME AFTER YOU -- WHEN THEY
15 STARTED COMING AFTER YOU?

16 A. THAT'S RIGHT. AND WE WERE SUPPORTING ACCESS
17 PREVENTION INITIATIVES BEFORE THAT. WE WERE SUPPORTING
18 MINIMUM AGE LAWS IN THE STATES BEFORE THAT AND ADVOCATING
19 THEM. ADVOCATING THE STRONG IMPLEMENTATION OF MINIMUM AGE
20 LAWS. SO WE HAD STARTED TO DO THINGS EVEN BEFORE 1994.

21 Q. AND ALL OF THE NEW DEPARTMENTS AND THE NEW --
22 WHAT ABOUT THE "WE CARD"?

23 A. ACTUALLY, "WE CARD" IN ONE FORM OR ANOTHER --
24 PRIOR TO BEING CALLED "WE CARD," IT WAS CALLED, "IT'S THE
25 LAW." BUT IT WAS ALSO AN ACCESS PREVENTION PROGRAM THAT
26 PHILIP MORRIS WAS SUPPORTING EVEN BEFORE I CAME INTO
27 CORPORATE AFFAIRS, CONTINUED TO SUPPORT WHEN I WAS PART OF
28 CORPORATE AFFAIRS, AND THEN WE, IN 19 -- I THINK '93 OR EARLY
4436

1 '94, STARTED TO TEST A PROGRAM IN OHIO USING THE "IT'S THE
2 LAW" SIGNAGE PROGRAM AS THE CENTERPIECE OF TRYING TO SEE HOW
3 WE COULD BECOME MORE PROACTIVE IN THE WHOLE AREA OF ACCESS
4 PREVENTION, WHICH THEN ULTIMATELY TURNED INTO THE ACTION
5 AGAINST ACCESS INITIATIVE AND OUR CONTINUING SUPPORT OF
6 "WE CARD."

7 Q. SO HERE'S A BOTTOM LINE QUESTION: IS IT JUST A
8 COINCIDENCE THAT MOST OF THESE BIG GAINS AND MOST OF THESE
9 BIG PROGRAMS THAT YOU TALKED ABOUT YESTERDAY HAPPENED AFTER

10 THE STATES' ATTORNEYS GENERAL TARGETED YOU FOR THESE REFORMS,
11 AMONG OTHER THINGS, OR IS IT NOT A COINCIDENCE?

12 A. LOOK. I WOULDN'T CALL IT A COINCIDENCE. THE
13 FACT IS, THAT WHEN YOU HAVE STATES' ATTORNEYS GENERAL SUING
14 YOU AND OTHER LAWSUITS, AND YOU'RE BEING DEMONIZED AND
15 VILIFIED IN THE MEDIA, IT CERTAINLY GETS YOUR ATTENTION, AND
16 IT'S A VERY HUMBLING EXPERIENCE. AND IT CAUSES YOU TO LOOK
17 INWARD AND TO START LISTENING AND RESPONDING.

18 Q. WE WERE TOLD BY THE LAST PHILIP MORRIS WITNESS
19 BEFORE YOU, DR. COBBS HOFFMAN, THAT THE TOBACCO INDUSTRY HAS
20 BEEN VILIFIED IN THE PRESS GOING ALL THE WAY BACK TO THE
21 1960'S.

22 MR. LEITER: YOUR HONOR, I'M GOING TO OBJECT TO THE
23 CHARACTERIZATION OF THE TESTIMONY.

24 THE COURT: SUSTAINED. SUSTAINED.

25 Q. BY MR. PIUZE: ANYWAY, ASSUME -- ASSUME THAT
26 ONE OF YOUR COMPANY'S EXPERT WITNESSES SPENT A LOT OF TIME
27 EXPLAINING HOW THE PRESS MADE TREMENDOUS FUN OF THE TOBACCO
28 INDUSTRY AND YOUR WITNESS SAID, THE PRESS --

4437

1 THE COURT: BUT SHE'S NOT AN EXPERT WITNESS, SO WE
2 CAN'T HAVE A HYPOTHETICAL QUESTION.

3 MR. PIUZE: SHE'S LISTED AS AN EXPERT WITNESS,
4 YOUR HONOR.

5 MR. LEITER: NO, SHE'S NOT, YOUR HONOR.

6 THE COURT: WELL, I IMAGINE NOT IN THIS PARTICULAR --

7 MR. LEITER: NO.

8 THE COURT: LET'S NOT GET INTO A DISCUSSION. JUST
9 REFRAME YOUR QUESTION AND PRESENT IT.

10 MR. PIUZE: I WILL. I WILL.

11 Q. WE'VE HEARD HERE THAT THE PRESS DEMONIZED YOUR
12 COMPANY GOING BACK 30 OR MORE YEARS.

13 MR. LEITER: AND AGAIN, THAT'S MISSTATING THE
14 TESTIMONY.

15 THE COURT: I THINK IT MAY.

16 MR. PIUZE: I'M SORRY?

17 THE COURT: I THINK IT MAY. THE WORD "DEMONIZED."

18 MR. PIUZE: YES. OKAY.

19 THE COURT: FAIR ENOUGH.

20 MR. PIUZE: SORRY ABOUT THAT.

21 THE COURT: ALL RIGHT.

22 Q. BY MR. PIUZE: YOU'VE WORN ME OUT.

23 WE'VE HEARD THAT THE PRESS MADE FUN OF AND MADE
24 NEGATIVE COMMENTS ABOUT YOUR INDUSTRY GOING BACK AT LEAST 30
25 YEARS.

26 NOW, YOU SAY THE REASON YOU CHANGED -- I THINK
27 YOU SAID, LET'S FACE IT, IF YOU'RE DEMONIZED IN THE PRESS,
28 AND IF THE ATTORNEYS GENERAL COME AFTER YOU, THEN WHAT?

4438

1 MR. LEITER: YOUR HONOR, THE QUESTION MISSTATES THE
2 TESTIMONY BOTH AS TO TIME PERIOD --

3 THE COURT: NO. I'M GOING TO ALLOW IT. I'M GOING TO
4 ALLOW IT. THE JURY CAN MAKE ITS OWN DECISION AS TO WHETHER
5 OR NOT IT'S A FAIR CHARACTERIZATION.

6 THE WITNESS: I THINK -- WHAT I SAID WAS, WHEN THE
7 STATES' ATTORNEYS GENERAL OR SOME OF THE STATES' ATTORNEYS
8 GENERAL ARE SUING, WHEN YOU'RE BEING DEMONIZED IN THE PRESS,
9 AND WHEN THE WHOLE TONE OF THE WAY TOBACCO COMPANIES ARE
10 BEING PERCEIVED STARTS TO CHANGE AS DRAMATICALLY AS IT DID IN
11 THE LATE '80'S AND '90'S, IT CERTAINLY GETS YOUR ATTENTION.
12 AND IT'S A VERY HUMBLING EXPERIENCE TO GO
13 THROUGH THAT. AND CERTAINLY, IT CAUSES YOU TO LOOK MORE
14 INWARD AND TO START LISTENING TO WHAT PEOPLE ARE SAYING AND

15 TO TRY TO START TO RESPOND TO SOCIETY'S EXPECTATIONS. I
16 THINK THAT'S WHAT I'VE SAID ALL THROUGH MY TESTIMONY.

17 Q. BY MR. PIUZE: SORT OF.

18 THE POINT I WAS TRYING TO MAKE IS THIS: THE
19 ATTORNEYS GENERAL DIDN'T COME AFTER YOU UNTIL 1994; THAT'S
20 WHEN THE FIRST ONE CAME AFTER YOU, RIGHT?

21 A. I BELIEVE THAT'S CORRECT, YES.

22 Q. BUT THE PRESS HAD BEEN SAYING BAD THINGS ABOUT
23 YOU FOR A LONG, LONG, LONG, LONG, LONG TIME, RIGHT?

24 A. THE PRESS HAD BEEN SAYING BAD THINGS FOR A LONG
25 TIME ABOUT THE PRODUCT, ABOUT THE COMPANIES. BUT I THINK THE
26 TONE OF THE DEBATE, OR OF THE REPORTING, STARTED TO CHANGE IN
27 THE MID TO LATE '80'S. I REALLY DO.

28 Q. SO WHAT I'M WONDERING HERE IS, IF THE PRESS HAD
4439

1 BEEN SAYING -- I DON'T WANT TO MISQUOTE ANYBODY -- WE'VE GOT
2 THE ARTICLES -- BUT IF THE PRESS HAD BEEN SAYING BAD THINGS
3 ABOUT YOU FOR A LONG, LONG, LONG TIME, BUT IT WASN'T UNTIL
4 THE STRONG ARM OF THE LAW IN THE SHAPE OF THE ATTORNEYS
5 GENERAL CAME TO YOU, THAT'S WHEN YOU DECIDED TO CHANGE,
6 RIGHT?

7 A. I THINK IT WAS A COMBINATION OF A LOT OF
8 THINGS. I'M NOT GOING TO TELL YOU THAT BEING SUED BY THE
9 STATES' ATTORNEYS GENERAL DIDN'T PLAY A ROLE IN US BEING
10 BROUGHT UP SHORT AND REALIZING THAT WE WERE OUT OF STEP WITH
11 SOCIETY'S EXPECTATION OF US.

12 Q. I AM NOT GOING TO BE ABLE TO FINISH TODAY. BUT
13 I WANT TO SHOW -- YOU RECOGNIZE THAT EXHIBIT, THAT EXHIBIT.
14 THAT'S ONE OF YOUR EXHIBITS, RIGHT?

15 A. YES.

16 Q. THAT'S MY HANDWRITING. AND I'M JUST GOING TO
17 TELL YOU IN ADVANCE. ASK YOU IN ADVANCE IF YOU'D PLEASE
18 THINK ABOUT THAT.

19 AND AS FAR AS ADDICTION IS CONCERNED, IF YOU
20 YOU'D THINK ABOUT THAT.

21 AND THEN I'LL ASK YOU THOSE QUESTIONS IN THE
22 MORNING, AND I'LL BE AS BRIEF AS I POSSIBLY CAN.

23 A. THANK YOU.

24 Q. OKAY. THANKS.

25 THE COURT: ALL RIGHT. THANKS VERY MUCH.

26 LADIES AND GENTLEMEN, JUST STICK WITH ME FOR A
27 SECOND BECAUSE I WANT TO HAVE JUST A LITTLE CHAT WITH YOU.
28 YOU KNOW, ONE OF THE THINGS I HAVE TO DO AS A

4440

1 JUDGE IS TRY TO KEEP OUR TRIALS MOVING ALONG, BECAUSE I DON'T
2 WANT TO KEEP YOU HERE FOREVER, BECAUSE YOU'VE BEEN VERY
3 PATIENT WITH US.

4 I WANT TO COMPLIMENT YOU, LADIES AND GENTLEMEN.
5 YOU ARE VERY ATTENTIVE. YOU'RE PAYING ATTENTION TO THIS
6 TRIAL. AND NO ONE CAN ASK FOR MORE THAN THAT. YOU KEEP
7 LISTENING AND PAYING ATTENTION.

8 BUT IN ORDER TO KEEP ON SCHEDULE, I'VE BEEN
9 THINKING ABOUT WHETHER OR NOT WE OUGHT TO START TRYING ON
10 MONDAY, IN THE MORNING AT 8:45, AND USE THAT TIME. BUT
11 BEFORE I MAKE A DECISION AS TO WHETHER OR NOT TO DO THAT, I
12 NEED TO KNOW: HAVE ANY OF YOU MADE COMMITMENTS THAT ARE
13 GOING TO PUT YOU IN A BAD POSITION?

14 BECAUSE I DID TELL YOU WE WEREN'T STARTING ON
15 MONDAYS UNTIL 1:30. SO IS THAT GOING TO --
16 YES.

17 JUROR MORSE: I HAVE AN APPOINTMENT MONDAY MORNING.

18 THE COURT: PERHAPS YOU CAN STAY WITH US AFTERWARDS,
19 AND WE'LL KIND OF TALK ABOUT THAT AND SEE WHAT THE SITUATION

20 IS.
21 BUT EVERYBODY ELSE IS FINE WITH IT IF WE CAN DO
22 IT?
23 ALL RIGHT. WELL, I HAVEN'T MADE A DECISION YET
24 ON THAT. SO AS OF NOW, IT'S STILL 1:30, BUT LET'S SEE WHAT
25 HAPPENS.
26 OKAY. WE'LL SEE YOU TOMORROW AT 8:45 A.M.
27 THANK YOU, LADIES AND GENTLEMEN.
28
4441
1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT OUT OF THE PRESENCE
3 OF THE JURY; WITH THE EXCEPTION OF
4 JUROR MORSE:)
5
6 THE COURT: OKAY. WE'RE OUTSIDE THE PRESENCE OF THE
7 JURY.
8 MR. MORSE, WHAT'S YOUR SITUATION?
9 JUROR MORSE: IT'S KIND OF EMBARRASSING. BUT I HAVE
10 AN APPOINTMENT FOR AN MRI ON MONDAY MORNING.
11 THE COURT: OKAY.
12 JUROR MORSE: IT'S NOT SERIOUS. I CAN CHANGE IT.
13 IT'S JUST ABOUT A MONTH AGO, I WENT TO -- TWO MONTHS AGO, I
14 WENT TO SAN FRANCISCO, AND I NOW, I HAVE TINNITUS IN MY RIGHT
15 EAR. JUST A RINGING SOMETIMES.
16 THE COURT: FROM THE AIR FLIGHT?
17 JUROR MORSE: YEAH. AND THE DOCTOR WANTS TO RULE OUT
18 ACOUSTIC NEUROMA, BUT I CAN POSSIBLY CHANGE THE APPOINTMENT.
19 THE COURT: WHAT I'M CONCERNED ABOUT, IF YOU CHANGE
20 IT, WHAT ARE YOU GOING TO CHANGE IT TO?
21 BECAUSE WE'RE STILL GOING TO BE AT THIS FOR A
22 FEW WEEKS.
23 JUROR MORSE: I CAN CHANGE IT TO AN EVENING
24 APPOINTMENT.
25 THE COURT: COULD YOU SEE IF YOU COULD DO THAT FOR US?
26 JUROR MORSE: I CAN MAKE AN APPOINTMENT AT 4:30.
27 THE COURT: I DON'T WANT TO DELAY YOU, THOUGH, GOING
28 TO SEE THE DOCTOR.
4442
1 JUROR MORSE: HE'S POSITIVE WHAT IT IS. HE JUST WANTS
2 TO RULE OUT SOMETHING ELSE. THAT'S ALL.
3 THE COURT: ARE YOU GOING TO DO THIS ON AN OPEN OR
4 CLOSED MRI?
5 JUROR MORSE: WHAT'S THE DIFFERENCE?
6 THE COURT: HAVE YOU EVER HAD AN MRI BEFORE?
7 JUROR MORSE: NO.
8 THE COURT: WELL, A CLOSED MRI IS WHEN THEY PUT YOU IN
9 THIS DONUT. THEY SLIDE YOU IN LIKE THIS. AND TIGHT IN HERE
10 LIKE THAT. IF YOU DON'T LIKE THOSE KIND OF CONFINES -- LIKE,
11 I DON'T LIKE THAT, LET ME TELL YOU RIGHT NOW.
12 JUROR MORSE: IT'S A CLOSED ONE.
13 THE COURT: HUH?
14 JUROR MORSE: IT'S THE CLOSED ONE.
15 THE COURT: ASK HIM ABOUT AN OPEN ONE. THEY HAVE THIS
16 NEW DEVICE WHERE YOU CAN LAY IN THERE AND JUST -- REALLY,
17 IT'S CLOSED, BUT IT'S NOT THE SAME. SO --
18 JUROR MORSE: REALLY?
19 THE COURT: MAYBE THE FACT WE HAD A LITTLE CHAT, I
20 MAYBE GAVE YOU AN IDEA THERE, TOO.
21 CONNECT WITH YOUR DOCTOR AND SEE IF YOU CAN'T
22 DO IT IN THE EVENING.
23 JUROR MORSE: I WILL.
24 THE COURT: WILL YOU KIND OF GET BACK TO ME BECAUSE

25 WE'RE GOING TO MAKE A DECISION TOMORROW?
26 JUROR MORSE: SURE.
27 THE COURT: THANK YOU, MR. MORSE.
28 JUROR MORSE: ALL RIGHT.
4443
1 THE COURT: ALL RIGHT.
2 COUNSEL, I'LL SEE YOU TOMORROW MORNING.
3
4 (CHORUS OF THANK YOU'S.)
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6 (AT 4:04 P.M., AN ADJOURNMENT WAS TAKEN
7 UNTIL FRIDAY, MAY 4, 2001 AT 9:00 A.M.)
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